IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

TYKISHIA J GRIFFITH
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL NO: 14O-UI-00832-ST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/20/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 26.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 14, 2013, reference 01, that held she was discharged for misconduct on October 10, 2013, and benefits are denied. A telephone hearing was held on December 9, 2013. The claimant participated. The employer did not participate. An Administrative law judge (ALJ) decision was issued December 10, 2013 that reversed and allowed claimant benefits. The employer appealed.

The Employment Appeal Board (EAB) remanded this matter for a new hearing. A telephone hearing was held on February 13, 2014. The claimant did not participate. Jason DeLaRosa, Operations Manager; Michael Phillips, Senior Manager; and Tom Kuiper, Representative, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on November 2, 2012, and last worked for the employer as a full-time courier driver on October 10, 2013. The employer terminated claimant on October 11 for failing to timely report a traffic violation. Claimant did let the employer know about it before it ran a review MVR report. Claimant had not been previously disciplined for this type of issue. The employer did not consider the prior warning letter discipline for termination but it cited this matter as an example claimant knew about the notification requirement.

The employer issued claimant a warning letter on March 4, 2013 for incurring a traffic violation while driving a company. She followed company policy by timely reporting it. Claimant was issued a citation for driving ten miles an hour or under while driving a company vehicle on June 4, 2013. Just before the employer was to review her annual driving record, claimant

reported it on October 9. The failure to timely report denies the employer an opportunity to assess the safety impact to the public depending on the seriousness of the offense.

The employer traffic notification policy applies differently whether it involves a serious offense. A speeding serious offense is 15 mph above the posted limit or 65 mph employer speed limit. Claimant's June 4 traffic offense is driving 10 mph or less.

The claimant failed to respond to the hearing notice and provide a telephone number to be called for the hearing. The UI Appeals C2T control system has no record of a claimant call prior to the hearing. Claimant called after the hearing had concluded. She admitted she failed to follow the hearing notice instruction, as she assumed she would be called due to the prior hearing.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

Claimant's request to reopen the hearing record is denied. Claimant assumed she would be called because she had participated in the prior hearing. This reason is not good cause to reschedule the hearing

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on October 11, 2013 for violation of company policy.

Claimant did not commit a serious traffic offense violation for speeding on June 4. While she violated the notification policy, it is not a substantial incident of misconduct to deny benefits. The employer did not offer any further reason for termination and job disqualifying misconduct is not established.

DECISION:

The department decision dated November 14, 2013 reference 01 is reversed. The claimant was not discharged for misconduct on October 11, 2013. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

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