IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARLO HERMELBRACHT
Claimant

FITZPATRICK AUTO CENTER INC
Employer

APPEAL NO: 12A-UI-01882-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Marlo Hermelbracht (claimant) appealed an unemployment insurance decision dated February 16, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Fitzpatrick Auto Center, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2012. The claimant participated in the hearing. The employer participated through Owners Tom Fitzpatrick and Bill Fitzpatrick, Comptroller Bob Baschke, and Attorney Jason Gann. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time general manager from March 2010 through January 11, 2012, when he was discharged for conduct not in the best interests of the employer. At the time of hire, the claimant signed a confidentiality agreement wherein he agreed not to disclose any company information, including personal financial information.

On approximately June 22, 2010, the employer reviewed a newsletter that had been prepared by one of its salespersons. The employer did not like the content of the newsletter because it appeared to indicate the actual owners were no longer involved with the business. Co-owner Bill Fitzpatrick and Comptroller Bob Baschke met with the claimant to discuss the matter. Mr. Fitzpatrick showed the claimant the newsletter and he denied any knowledge of the contents of the newsletter. The claimant left but shortly thereafter and he called Mr. Fitzpatrick and said that he was aware of the contents of the newsletter. The employer concluded the claimant lied about the newsletter and documented the incident in the claimant's personnel file.

On January 10, 2012, Co-Owner Tom Fitzpatrick was informed that the claimant placed an ad in the Storm Lake Times newspaper. The ad sought salesmen and auto mechanics for a "tire store/used

car dealer" and the claimant never discussed hiring additional sales persons or auto mechanics. That evening, Mr. Fitzpatrick removed the computer from the claimant's office and discovered some inappropriate emails sent by the claimant to someone from a Ford dealership in Miami. The claimant used his work email account to send a letter dated May 25, 2011. The letter states among other comments, "It took four months to find a job and the job I have sucks. The person I work for is the meanest person that I have encountered. He has no respect for his employees." However, then the claimant goes on to state, "He pays them real well so that they can not (sic) leave." He subsequently discloses the salaries of the receptionist, the comptroller, the sales manager and the "detail guy that sucks." The claimant goes on to say, "Plus this owner has no idea how to read a financial" and "He hasn't a clue and it is frustrating to put up with this crap everyday (sic). I drive 70 miles one way to come to this and then I and the salesmanager (sic) get pulled in to get motivated 'negatively' in other words yelled at and he doesn't have a freaking clue. Oh well sorry to vent. That is why I am looking for a new job."

The employer found another email sent to a Chris Rasmussen at rasmussenford.com on August 23, 2011. This email began with, "Thats (sic) funny to hear. Tom doesnt (sic) think you guys sell anything. The Polk registration states that Ford is up considerably. His errogance (sic) says that you cant (sic) be the ones." Mr. Rasmussen wrote back and said, "Have fun with Tom! He's an interesting one…By 'interesting' I mean pain in the butt." The claimant then responded with, "Yes, he is a pain in the BUTT."

Tom and Bill Fitzpatrick met with the claimant on January 11, 2012 and showed him the ad in the newspaper. He was asked if he knew anything about the ad and he responded by stating that it was an ad used by Tires Tires Tires, a tire store and direct competitor of the employer. The claimant admitted he had placed the ad on behalf of Tires Tires Tires. In the hearing, he testified that he hoped he would be hired by Tires Tires Tires. The employer advised the claimant that his services were no longer needed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982)*. The claimant was discharged on January 11, 2012 for conduct not in the best interest of the employer. He violated the confidentiality agreement by unnecessarily disclosing financial information, he used his work computer and work email account to write numerous derogatory remarks about the owner, and he acted to further a competitor's business for his own personal gain. This occurred after the claimant had previously "lied" to the employer when questioned about a document.

Typically, warnings are required before an employee is disqualified from receiving unemployment insurance benefits. However, the claimant's actions are sufficiently severe to negate that requirement. The claimant was looking for other employment as far back as May 2011 because he felt his job "sucked" and the owner was the "meanest person" the claimant had met. He feels he was mistreated and justifies his actions based on that alleged mistreatment.

No warnings could have improved the situation and would have likely made things worse. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 16, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Susan D. Ackerman
Administrative Law Judge

_____
Decision Dated and Mailed

sda/kjw