IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KENNETH D OLD COYOTE
Claimant

B T INC
Employer

APPEAL NO: 09A-UI-05598-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/08/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Kenneth D. Old Coyote (claimant) appealed a representative's March 30, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from B. T., Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 6, 2009. While the claimant received the hearing notice and sent in numerous potential exhibits for the hearing, he failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. John Fatino, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Sandy Loney and Chad Lake. The record was closed at 10:41 a.m. At 11:01 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the May 6, 2009 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. After the claimant called in after the close of the hearing, the administrative law judge attempted several times to contact the claimant to inquire about why he had not previously called in to participate in the hearing, but the administrative law judge was never able to directly contact the claimant. When he made a second contact with the Appeals Section on May 7, he asserted to the clerk that he had called in his telephone number for the hearing. However, the claimant did not have a control number, which the Appeals Section issues to each party who calls in for a hearing to verify that they have called. An entry of a call from the claimant does not appear in the call-in logbooks maintained by the Appeals Section, nor had he followed the

instructions routinely given to parties who call in as to what they should do if they do not get a call at the designated hearing time. The first time the claimant directly contacted the Appeals Section was on May 6, 2009, an hour after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

The claimant started working for the employer on August 22, 2007. He worked full time as an over-the-road truck driver. His last day of work was March 5, 2009. The employer discharged him on March 6. The stated reason for the discharge was having too many safety violations.

On March 4 the claimant was at a client's loading dock in Champaign, Illinois; as he was backing into the dock, he hit a parked trailer beside his bay. No extenuating circumstances were provided to explain this occurrence beyond carelessness and negligence. The claimant had seven prior incidents of safety violations, which he had been warned was unacceptable, including two other incidents of hitting another trailer due to carelessness while backing, and one incident of tearing up a median due to carelessness while backing. As a result of this further and final incident on March 4, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id. Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the May 6, 2009 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated carelessness and negligence after warning 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 30, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 5, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs