IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GUY T RUCKER
Claimant

BILLION HAWKEYE INC
Employer

APPEAL NO: 14A-UI-05214-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/13/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Guy T. Rucker (claimant) appealed a representative's May 7, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Billion Hawkeye, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held at 1:00 p.m. on June 9, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and register a telephone number for the system at which a witness or representative could be reached for the hearing and did not participate in the hearing. The record was closed at 1:23 pm. At 2:58 p.m., the employer called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the claimant, 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The employer received the hearing notice prior to the June 9, 2014 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and register the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer contacted the Appeals Section was on June 9, 2014,

nearly two hours after the scheduled start time for the hearing. The employer 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.

After a prior period of employment with the employer, the claimant most recently started working for the employer on or about October 15, 2013. He worked full time as a sales consultant in the employer's Iowa City, Iowa car dealership. His last day of work was April 11, 2014. The employer, through used car sales manager Walker, discharged him on that date. The reason asserted for the discharge was because of a comment the claimant had made to a coworker.

Earlier that day the claimant had been "yelled at" by Walker. A while later the claimant was having a private conversation with a coworker, in which he commented that it was "ridiculous to have to work with a bunch of ignorant m - - - - - f - - - - - -." That coworker apparently then shared that comment with Walker, who then told the claimant he was discharged. There was no record of prior discipline.

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. Rule 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. Rule 871 IAC 26.14(7)c.

The first time the employer called the Appeals Section for the June 9, 2014 hearing was after the hearing had been closed. Although the employer intended to participate in the hearing, the employer 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 employer did not establish good cause to reopen the hearing. Therefore, the employer'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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. Rule 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. Rule 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 reason cited by the employer for discharging the claimant is his vulgar comment made privately to a coworker. While not appropriate, under the circumstances of this case, the claimant's making of the private comment was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 7, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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