IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIMOTHY S BEATY
Claimant

FARLEY'S & SATHERS CANDY CO INC
Employer

APPEAL NO. 09A-UI-15501-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/01/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Timothy Beaty, filed an appeal from a decision dated October 9, 2009, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 17, 2009. The claimant participated on his own behalf. The employer, Farley's and Sathers Candy Company, Inc. (Farley's), did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Timothy Beaty was employed by Farley's from March 13, 2009 until September 21, 2009 as a full-time forklift operator. On September 19, 2009, the claimant volunteered for overtime from 3:00 p.m. until the cleaning was done. At 5:30 p.m. he had completed all the cleaning in his area and in another department and asked Travis, the supervisor, if he could go home. Two other employees, Don and Chris, were there and Travis said since Chris was the senior person, it was up to him and then walked away.

Chris said he did not intend to leave because he had only worked two and one-half hours and that was not enough time to pay for the expense of the commute. Don said he was "working off points." The claimant then left.

The record was closed at 1:09 p.m. At 1:11 p.m., the employer called and requested to participate. The employer received the hearing notice prior to the November 17, 2009 hearing. The instructions inform the parties that if the party does not call 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. The first time the employer directly contacted the Appeals Section was on November 17, 2009, 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.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for leaving work before the end of the voluntary overtime shift. He did request permission from the supervisor but was told it would be up to the senior person on the shift to decide who would go home early. The supervisor then left and the decision was made between the three employees. The supervisor apparently knew one of them would be going home and apparently was not overly concerned as to which one it was. The employer has failed to provide any evidence of substantial, job-related misconduct and disqualification may not be imposed.

The next issue is whether the record should be reopened. The judge concludes it should not.

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.

The first time the employer called the Appeals Section for the November 17, 2009 hearing was after the hearing had been closed. Although the employer may have intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed 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 request to reopen the hearing is denied.

DECISION:

The representative's decision of October 9, 2009, reference 02, is reversed. Timothy Beaty is qualified for benefits. provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css