IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM R DABNEY
Claimant

WEST SIDE TRANSPORT INC
Employer

APPEAL NO. 10A-UI-16988-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/14/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

William Dabney (claimant) appealed a representative's December 6, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with West Side Transport (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 27, 2011. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. After the hearing concluded the administrative law judge learned that the employer did call in while the hearing was in progress but the administrative law judge was not told of the employer's call until after the hearing record closed. The hearing was rescheduled for February 4, 2011. Neither the claimant nor the employer answered the administrative law judge's call. The claimant's message said the subscriber could not take calls. The employer's message told the caller to leave a message. The administrative law judge left a message for the employer and waited until ten minutes after the start of the hearing. The employer did not return the administrative law judge's call. The administrative law judge used the testimony given on January 27, 2011, to make her determination.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 16, 2008, as a full-time truck driver. The claimant received the employer's handbook. The claimant asked for time off from July 14 through 18, 2010, due to the premature birth of his daughter. The employer granted his time off and the claimant parked the tractor at his home in New Jersey. The Safety Director previously approved the claimant's home as an authorized place to park the tractor.

On July 17, 2010, the employer informed the claimant that he had to return the tractor to Iowa by July 18, 2010. The claimant requested more time off. The employer denied the request. The claimant could not drive to Iowa in less than two days. He offered to take the tractor to an

authorized drop yard. The employer refused. The employer terminated the claimant on July 17, 2010, for not being able to return the tractor to Iowa by July 18, 2010, while he was still on leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 6, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs