IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK P HORNBACK
Claimant

ENTERPRISE RENT-A-CAR COMPANY MIDWEST
Employer

APPEAL NO. 09A-UI-10907-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06-28-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 26, 2009. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a branch manager full time beginning April 17, 2007 through July 2, 2009 when he was discharged.

As part of his job benefits the claimant was allowed to drive home a rental car owned by the business. He was only allowed to drive the car to and from work, and to no other locations. The claimant's father was going to pick him up at his home so they could take a trip, but was unable to pick him up so the claimant drove his rental car to his father's house and left it parked there while they went on a trip. When they returned from their outing the claimant discovered that one of his father's neighbors had backed into the rental car damaging it. He reported the incident to the police and filled out a police report.

The claimant reported the incident to the corporate office and provided them with a copy of the police report that listed the location of the incident as his father's driveway. On June 15 the claimant's supervisor asked him where the vehicle was when the accident occurred. The claimant told the employer that the vehicle was "parked in my driveway." Later the employer learned that the vehicle was not parked in the claimant's driveway, but in his father's so they knew that the claimant had driven the vehicle to somewhere other than work.

The claimant was discharged for being dishonest with the employer during the investigation of the accident when he told them that the vehicle was parked in his driveway. The employer

believed that the claimant was trying to hide from them that he had driven the vehicle to a location other than the workplace. The claimant had no prior warnings for any conduct.

The employer called after the hearing record had been closed and had not followed the hearing notice instructions pursuant to 871 IAC 26.14(7)a-c.

The employer received the hearing notice prior to the August 26, 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. The first time the employer directly contacted the Appeals Section was on August 26, 2009, after the scheduled start time for the hearing and after the hearing record had been closed. 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:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

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 August 26, 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 employer's request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.
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> 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 honest with the police but he was not honest with the employer about the location of the accident. The claimant owed the employer an honest explanation of the location of the accident. By telling the employer that the vehicle was parked in his driveway, the claimant was trying to conceal from the employer that he had driven the vehicle to a prohibited location. The claimant's dishonesty was sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 30, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/pjs