

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRANT RUGGLES

Claimant

APPEAL NO. 13A-UI-13709-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 11/17/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated December 9, 2013, reference 01, that held claimant eligible to receive unemployment insurance benefits. A telephone hearing was scheduled for January 8, 2014. The employer, the appellant herein, did not respond to the hearing notice instructions. The claimant participated. Participating as a witness for the claimant was Ms. Leslie Piper, Former Shift Lead Manager. Based upon the appellant's failure to participate, a review of the administrative file and the record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which the employer could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the administrative file and record to determine whether the unemployment insurance decision should be affirmed.

Grant Ruggles was employed by Pilot Travel Centers LLC from November 2011 until November 15, 2013 when he was discharged from employment. Mr. Ruggles held the position of full-time general manager and was paid by salary. The claimant was discharged following an investigation into the misappropriation of gasoline by a shift lead manager employed by the company. Mr. Ruggles had no knowledge of the misappropriation or the manner in which it was being accomplished until informed of the matter by the company. The claimant did not have sufficient software or knowledge of the company's electronic recordkeeping systems to determine as to whether "slippage" in gasoline sales revenues was occurring. The claimant had

no knowledge of the other employees' activities and had not condoned nor sanctioned the activities of the offending employee. The claimant believes that his discharge was based only on the statement by the misappropriating employee that the claimant was "aware of it." Although the claimant maintained his innocence in the matter and asserted that he had no knowledge of the misappropriation, he was nevertheless discharged from employment. Mr. Ruggles had not been previously warned for any matter by this employer.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

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 administrative law judge has carefully reviewed the available evidence in the administrative file and in the hearing record in this matter and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The claimant had no knowledge of the misappropriation by another employee and the claimant had no manner of determining whether any misappropriation was taking place. He had not been previously warned or counseled and denied any involvement in the misappropriation when questioned by his employer. The evidence in the record does not establish disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated December 9, 2013, reference 01, is affirmed. The representative's decision remains in effect. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge or an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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