

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS J WHITE
Claimant

APPEAL NO. 13A-UI-12866-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMT CORPORATION
Employer

**OC: 12/16/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Chris White filed an appeal from an unemployment insurance decision dated November 12, 2013, reference 01, that denied unemployment insurance benefits. A telephone hearing was scheduled for December 10, 2013. The claimant, the appellant herein, did not participate in the hearing. The claimant provided a telephone number but was not available at the telephone number provided, although repeated attempts were made. The claimant did not call in during the hearing nor request a postponement as required by the hearing notice. The employer participated by Mr. Kendall Kelly, Human Resource Manager and Mr. Bob Franken, Production Supervisor. Based upon the appellant's failure to participate in the hearing, 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 he 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 the record to determine whether the unemployment insurance decision should be affirmed.

Mr. White was employed by GMT Corporation from May 2, 2011 until October 14, 2013 when he was discharged from employment. Mr. White was employed as a full-time production worker and was paid by the hour.

The claimant was discharged following an investigation that showed the Mr. White had repeatedly engaged in horseplay at work and had been previously warned. The claimant was

discharged based upon a final incident in which another employee complained about Mr. White's conduct. It was determined that Mr. White had again engaged in horseplay, which included the placing of a large zip tie around the other worker's neck and leading the other worker by the zip tie as if it were a "dog leash." Because the claimant had been previously warned about horseplay and continued to engage in it, he was discharged from employment.

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.

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.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant continued to engage in dangerous horseplay after specifically being warned. This conduct showed a willful disregard for the employer's interests and standards of behavior that the company had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

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 November 12, 2013, reference 01, is affirmed. The representative's decision remains in effect. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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