IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MAC D VANPELT
Claimant

MAJESTIC LIMOUSINE SERVICE LLC
Employer

APPEAL NO: 19A-UI-00298-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/16/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 29, 2019. The claimant participated in the hearing. Scott Woodruff, Owner; Melissa Woodruff, Owner; and Dave Warwick, General Manager; participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time chauffer for Majestic Limousine Service from August 6, 2018 to December 21, 2018. He was discharged after several performance issues.

On October 2, 2018, the claimant hit the mirror of a parked vehicle in downtown Des Moines while driving one of the employer's vehicles (Employer's Exhibit One). The cost of the damage was $150.00. On November 1, 2018, the claimant was tardy (Employer's Exhibit Two). He was scheduled to start work at 5:45 a.m. but did not arrive until 6:12 a.m. (Employer's Exhibit Two). On November 9, 2018, the claimant backed into a parking spot without getting out to look behind him, as required by the employer's policy and struck a handicap sign with his left rear fender (Employer's Exhibit Three). On November 27, 2018, the employer's GPS tracking system showed the claimant speeding 84 miles per hour in a 70 mile per hour zone at 10:10 a.m., 65 miles per hour in a 55 mile per hour zone at 3:07 p.m., 81 miles per hour in a 70 mile per hour zone at 5:22 p.m., and 80 miles per hour in a 70 mile per hour zone at 6:12 p.m. (Employer's Exhibits Four and Five). On November 28, 2018, General Manager Dave Warwick met with the claimant to discuss several issues including the speed alerts the employer received (Employer's Exhibit Five). Mr. Warwick asked the claimant if he was in a hurry for some reason and the claimant stated his passenger was late (Employer's Exhibit Five). Mr. Warwick reminded the claimant that the employer does not speed for clients who "do not

plan properly" (Employer's Exhibit Five). Mr. Warwick asked the claimant if he was in a hurry on his way home as three of the four excessive speeds were clocked on his way home without a passenger in the vehicle and the claimant did not respond (Employer's Exhibit Five). On November 28, 2018, the claimant was late to the spot time of the pickup which was 7:33 a.m. (Employer's Exhibit Six). The claimant arrived at 7:48 a.m. (Employer's Exhibit Six). Spot time is the time the driver is expected to be on location for the designated trip. The pickup time occurs when the client gets in the vehicle. On December 1, 2018, the claimant was assigned to drive a family to specified sites to look at Christmas lights. The customer wrote a one-star Google review of the trip stating the claimant spent the majority of their "paid time" driving around dark streets instead of the neighborhoods with light displays (Employer's Exhibit Seven). The customer indicated the claimant got lost several times, was driving too fast for the weather conditions and "curb checked" the vehicle on multiple occasions (Employer's Exhibit Seven). Mr. Warwick told the owners he would look into the situation but stated the claimant ran a training trip the day before the trip with these customers and that Mr. Warwick reviewed the trip with him and gave him all the locations that "should have worked with an Ankeny pickup" (Employer's Exhibit Seven). Mr. Warwick directed the claimant to research all areas on Google Maps and the claimant stated he was doing so as they spoke (Employer's Exhibit Seven). Finally Mr. Warwick told the claimant to put all locations in the Garmin GPS so "he could pull each one up from recent locations to get to the next spot" (Employer's Exhibit Seven). Mr. Warwick watched video of the trip and noted the claimant went the wrong way several times and missed some sites altogether (Employer's Exhibit Seven). Mr. Warwick and Co-Owner Melissa Woodruff met with the claimant December 7, 2018, and asked him to explain the trip. With the exception of a wrong turn he made at the beginning of the trip, the claimant defended his route and the fact he missed several light displays (Employer's Exhibit Seven). Ms. Woodruff asked him about the client's reports that he was driving too fast for the weather conditions which was heavy rain and that he hydroplaned on one occasion and hit the curb several other times (Employer's Exhibit Seven). The claimant laughed and denied any of the driving concerns happened (Employer's Exhibit Seven).

On December 19, 2018, Mr. Warwick watched the vehicle camera footage from the onboard cameras of the vehicles the claimant had driven the last few days and then asked the claimant to meet with him (Employer's Exhibit Ten). The parties met December 21, 2018, and the employer questioned him about several incidents including being on his cell phone while driving December 14, 2018, from 6:07 p.m. to 6:19 p.m., using both hands to take his tie off while driving December 14, 2018, at 8:15 p.m., and using an iPad while driving December 14, 2018, at 8:16 p.m. (Employer's Exhibit Two). On December 15, 2018, the claimant arrived at 2:21 p.m. for a 2:15 p.m. spot time, was operating an iPad while driving at 3:04 p.m., and using a cell phone while driving at 6:02 p.m. (Employer's Exhibits Two and Ten). Mr. Warwick also observed that on December 16, 2018, the claimant arrived at 5:52 a.m. for a 5:45 a.m. spot time, was using a cell phone while driving at 8:03 a.m., used both hands to remove his tie when driving at 11:19 a.m., and was using his cell phone while driving at 11:20 a.m. (Employer's Exhibits Two and Ten). On December 18, 2018, the claimant arrived at 6:09 p.m. for a 5:30 p.m. driver meeting (Employer's Exhibit Ten).

After reviewing all of these incidents and considering the claimant violated the employer's cell phone policy by using his cell phone on multiple occasions between December 14 and December 16, 2018, the only dates for which the employer reviewed the video after December 1, 2018, the employer terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant committed several serious violations of the employer's policy and effectively fails to take responsibility for his actions. Between October 2 and November 9, 2018, he had two preventable accidents. He missed his spot time on four occasions between November 1 and December 16, 2018. The employer received four speed alerts from the vehicle the claimant

was driving November 27, 2018, when he was driving excessively over the speed limit. The claimant testified he was speeding because the client was late but even if that were an allowed reason, which it is not, the other three incidents occurred on the claimant's way home when his vehicle contained no clients. The claimant initially testified there was a problem with his cruise control but later changed his testimony. He then had a Christmas light tour where the clients were extremely dissatisfied with his services and for which the claimant did not accept responsibility. Finally, the claimant was operating a cell phone and an iPad while driving the employer's vehicle in violation of the employer's policy. The claimant stated he was talking to the office but the employer checked its phone records and there were no calls to the vehicles the claimant was driving. While the employer put trip details on iPads for drivers to use the iPads are only to be used when the driver is stopped. As a professional driver, the claimant knew or should have known that his actions placed others at risk and exposed the employer to unnecessary liability.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 10, 2019, 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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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/scn