

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER S LEIHENSEDER
Claimant

APPEAL NO: 18A-UI-00571-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTERPRISE RENT-A-CAR COMPANY
Employer

OC: 12/03/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated January 8, 2018, reference 01 was denied unemployment insurance benefits finding that the claimant was discharged from work on December 5, 2017, for a violation of a known company rule. After due notice was provided, a telephone hearing was held on February 7, 2018. Claimant participated. The employer participated by Mr. Seth Weis, Area Manager. Employer Exhibits A through D were admitted into the hearing record.

ISSUE:

Whether the claimant was discharged for job misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Tyler S. Leihenseder began employment with Enterprise Rent-A-Car Company on June 15, 2011. The claimant was last employed as a full-time Branch Manager and was paid salary plus commissions. His immediate supervisor was Mr. Seth Weis, Area Manager. Mr. Leihenseder was discharged on December 5, 2017, for failure to follow company procedures relating to the damage of a rental vehicle.

On December 1, 2017, the company's risk manager was reviewing company records and found a discrepancy and violation of policy in the way that Mr. Leihenseder had reported and documented damage to a company rental vehicle.

The company investigated further and determined that Mr. Leihenseder had rented the vehicle from his branch location again after the initial damage, but had failed to note the damage on the rental agreement to the next renter and that Mr. Leihenseder had not written a required report to the company used to determine how the damage costs should be allocated. Later, when the vehicle was dropped off at a different location, there was an issue about who had caused the damage. The Branch Managers of the location where the car had been dropped off, contacted Mr. Leihenseder to inform him of the situation and to remind him that he needed to complete a

damage report to submit to the company because the damage on the vehicle had taken place during the time when it had been rented from Mr. Leihenseder's branch location.

Subsequently, the vehicle was again rented to another patron without the report documenting the damage to the company or the patron, causing similar issues about which patron or branch location was responsible for the damage. Mr. Leihenseder was again informed of the situation by the Davenport branch location and told to file the car damage report to the company.

When Mr. Leihenseder prepared a damage report he did not correctly identify the initial renter of the vehicle, but instead made a false entry asserting that another person caused the damage and that person had bought the company's "protection plan", and thus was not liable to repay the company for the damages.

The incorrect reporting in this manner would result in the cost of the damage being distributed to Mr. Leihenseder's branch location over a 12 month period instead of during the month of the occurrence. This benefitted the claimant because he would receive higher commissions from the company.

It is the claimant asserts that he had inadvertently neglected to follow company procedure in reporting the damage, although he had been reminded by two other Branch Managers. Mr. Leihenseder asserts that he mistakenly identified the wrong renter and the "protection policy" because he was in a hurry and made a mistake. Mr. Leihenseder believes that the other managers are partially at fault because they did not properly inform him quickly enough that the vehicle had been returned to the locations, and that the other managers could have filed supplementary damage reports.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional job related misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof to establish disqualifying job misconduct. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, Mr. Leihenseder was an experienced Branch Manager. The claimant was aware of the company's damage reporting procedures and was aware that any damage to company rental vehicles was to be immediately reported, both to satisfy the employer's reporting requirements, and also to establish fault and identify the branch location so that the loss to the company could be properly allocated. If the damage report was not timely and correctly submitted, it was foreseeable confusion would result between branch locations as to when the damage had occurred and where the responsibility rested. Because the proper information was not provided, the loss attributed to the Branch that rented the vehicle when the loss took place would be spread over a 12-month period and would be less of an impact on the claimant's monthly commission.

The administrative law judge is aware that the claimant maintains that his errors and omissions were not intentional. Some of the delay in filing the required damage report may have taken place because the claimant was busy with other duties, however the claimant's substitution of the name of a fictitious renter and the assertion that that renter had a protection plan shows that Mr. Leihenseder acted to intentionally provide misinformation to the company. This conduct was in willful disregard of the employer's interests and the standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated January 8, 2018, reference 01 is affirmed. Claimant was discharged for job related misconduct. Unemployment insurance benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn