

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J KNABEL
Claimant

APPEAL NO. 09A-UI-05098-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTT GOINS INSURANCE AGENCY INC
Employer

**Original Claim: 03/01/09
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Scott Goins Insurance Agency, Inc. (Goins), filed an appeal from a decision dated March 25, 2009, reference 02. The decision allowed benefits to the claimant, Joseph Knabel. After due notice was issued, a hearing was held by telephone conference call on April 28, 2009. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by President Scott Goins.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Joseph Knabel was employed by Goins from January 1, 2008 until March 2, 2009 as a full-time property and casualty insurance salesman. On February 27, 2009, employees in the office brought to President Scott Goins's attention an application they felt looked suspicious. Applications for insurance are to be filled out by the sales person and signed by the applicant. Before coverage can begin, money must be received by the applicant or a voided check given if the payment is to be made by automatic withdrawal from a bank account.

The handwriting on the application was identical to the handwriting of the signature. Mr. Goins went to the address of the man who purportedly signed the application, and spoke with his spouse. The spouse said they had no intention of insuring their property with State Farm Insurance. Mr. Goins then checked further into the matter and found the coverage had been made effective December 29, 2008, without any payment from the alleged applicant, or any voided check assuring future payment. In addition, Mr. Knabel had submitted the insurance application that same day in order to receive commission and bonuses. Most importantly, he had obligated State Farm Insurance to cover the applicant's property even though no money or payment assurances had been received.

Mr. Goins spoke with Mr. Knabel on Monday, March 2, 2009, about the matter. When the claimant was asked if he had signed the application, he did not deny it. Instead, he stated, "I

am not going to admit to signing the application because I'm not going to jail." He did admit he had not gotten a payment or voided check and knew he should not have submitted the application for payment of commission and bonuses.

The employer gave him the opportunity to resign or be discharged and the claimant elected to resign. Joseph Knabel has received unemployment benefits since filing a claim with an effective date of March 1, 2009.

The record was closed at 2:18 p.m. At 3:04 p.m., the claimant called the Appeals Section but the administrative law judge had started her 3:00 p.m. hearing and was not available at the time. The claimant spoke with one of the support staff and admitted he had received the hearing notice prior to the April 28, 2009 hearing. The judge was not able to call him back after the 3:00 p.m. hearing, because he called the support staffer a rude name and hung up before she could ask for his number.

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 claimant directly contacted the Appeals Section was on April 28, 2009, after the scheduled start time for the hearing. The claimant 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:

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 claimant was given the choice of quitting or being discharged. Under the provisions of 871 IAC 24.26(21), it is not a voluntary quit when a claimant is given the choice between quitting and being discharged. The inquiry here is whether he was discharged for misconduct. The administrative law judge concludes he was. He forged a signature on an application for insurance. In addition, he submitted it without payment. As a result, the insurance company was obligated to cover the property even without payment or assurances of payment from a bank account. He submitted this forged document so he could receive bonuses and commissions to which he was not entitled, a form of theft of wages from the employer. This was done knowingly and intentionally, not in error. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

The next issue is whether the record should be reopened. The judge concludes it should not.

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 claimant called the Appeals Section for the April 28, 2009 hearing was after the hearing had been closed. Although the claimant may have intended to participate in the hearing, he 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 claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of March 25, 2009, reference 02, is reversed. Joseph Knabel is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw