IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LUKE R GRAN
Claimant

PRACTICAL FARMERS OF IOWA
Employer

APPEAL NO: 14A-UI-06195-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/04/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Luke R. Gran (claimant) appealed a representative's June 6, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Practical Farmers of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on July 29, 2014, and reconvened and concluded on July 30, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-06196-DT. The claimant participated in the hearing and was represented by James Gran, attorney at law. Sally Worley appeared on the employer's behalf. One other witness, Suzi Howk, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 25, 2009. As of about February 2014 he worked full time as membership and sponsor coordinator. His last day of work was May 7, 2014. The employer discharged him on that date. The reason the claimant was told he was being discharged was because he "was not a good fit"; the employer asserted for the discharge was misconduct for failing to keep up with deadlines and being rude to other employees.

Shortly after beginning his new duties, on February 10 Worley, the employer's operations director, gave the claimant a "performance improvement review" which identified some areas of concern including taking PTO without prior permission, keeping up with his work duties, and "less complaining." The review indicated that there would be a meeting "in 60 days to discuss

improvements made in this area. I [Worley] anticipate his professionalism and follow through to improve. If it does not, at the next meeting, we will discuss next steps such as probation." (Employer's Exhibit Four.) There was not another meeting in 60 days (about April 10) to discuss the performance review. The next meeting specifically with regard to the claimant's overall performance and status was his discharge meeting on May 7.

The employer had given the claimant responsibility to update a membership plan. The claimant believed that in order to correctly do a membership plan, there had to be clear definitions as to what constituted being a "member." He worked on this through about the end of April. On April 30 the employer advised the claimant that what he had been doing was not what the employer wanted. The claimant was unable to get the project into the form the employer wanted by May 5, but did turn in the project on May 7.

On May 6 the claimant was brought into a meeting with Worley and a coworker to discuss a project the other coworker had been working on for several months. The employer wanted the claimant to provide further assistance. The claimant was initially reluctant, as he felt that his time was not being utilized very effectively as he felt the coworker was not very qualified for the project. He verbalized as much during the meeting, but at the end of the meeting he agreed to assist.

There was not a reoccurrence of the concern in the February 10, 2014 review regarding the taking of PTO without proper permission. However, the employer felt that the claimant's expressions of reluctance and his expression that the coworker did not have the proper qualifications to be doing the project in the meeting on May 6 were rude and at least bordered on insubordination, and that he was not making sufficient progress on keeping up with deadlines. The employer determined to skip the second and third steps of the employer's termination policy which would have 1) established a schedule for checking in with the employee to monitor progress; and 2) establish a period of probation, both with the intent of "rehabilitating" and retaining the employee. Rather, the employer determined to pay the claimant for a two-week period of "probation" and to discharge him immediately.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to keep up with deadlines after the February 10 review and his conduct in the meeting on May 6. As to the work performance issue, misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. The claimant was not aware that his job was in jeopardy regarding his struggles with the membership plan; he had reasonably understood that if his job performance continued to be unsatisfactory, he would receive additional corrective action, including an effective probationary period. The claimant's failure to satisfy the employer's expectations regarding his work performance was not intentional.

As to his conduct in the meeting on May 6, the employer has not established that the claimant's conduct was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or a good faith error in judgment or discretion. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). He was not vulgar, threatening, or combative during the meeting, even if he did become somewhat frustrated. Even if the employer had a good business reason for deciding to end the employment, the employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 6, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs