

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J DETERS
Claimant

APPEAL NO: 13O-UI-13269-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARAKS TRUCKS REPAIR
Employer

**OC: 07/07/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Baraks Truck Repair (employer) appealed a representative's August 12, 2013 decision (reference 02) that concluded Andrew J. Deters (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. There had been a prior hearing and decision in this matter, but after appeal to the Employment Appeal Board, this matter was remanded to the Appeals Section for a new hearing. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:30 a.m. on December 20, 2013. A review of the Appeals Section's conference call system indicates that both parties failed to respond to the hearing notice and provide a telephone number at which they could be reached for the hearing and did not participate in the hearing. Based on a review of the available information 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:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 12, 2012. He worked full time as a technician. His last day of work was June 18, 2013. The employer discharged him on that date. The reason asserted for the discharge was poor performance. Throughout his employment the claimant was unable to work quickly enough to be sufficiently profitable. When the claimant was unable to improve despite additional training, the employer discharged the claimant.

The claimant established an unemployment insurance benefit year effective July 7, 2013. He received unemployment insurance benefits through the week ending August 31, 2013, and received unemployment insurance benefits in a gross amount of \$1,686.00. The administrative

law judge notes that the employment took place in the state of Illinois, and the wage credits earned were not reported in the state of Iowa.

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. 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. 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. 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 poor work performance. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally worked below the best of his abilities. A discharge solely due to a failure to perform satisfactorily does not constitute misconduct, and does not in and of itself relieve the employer's account from charge. 871 IAC 24.32(5). 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.

As the employment was entirely outside the state of Iowa, the employer's chargeability for any benefits paid would be determined by the state in which those wage credits were accrued.

DECISION:

The representative's August 12, 2013 decision (reference 02) is affirmed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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