IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FREDRICK A NORMAN
Claimant

NELSON MACHINE & FORGE LC
Employer

APPEAL NO. 10A-UI-16262-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/15/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Nelson Machine & Forge, L.C. (employer) appealed a representative's November 19, 2010 decision (reference 02) that concluded Fredrick A. Norman (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 12, 2011. The claimant participated in the hearing. Richard Hanson, attorney at law, appeared on the employer's behalf and presented testimony from five witnesses: Steve Nelson, Diana Kuhns, Ron Johnson, Robert Gross, and Eric Kardell. 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.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on June 7, 2010. He worked full-time as a machinist. His last day of work was August 13, 2010. The employer informed him on August 9 that he would be discharged effective August 13. The reason he was told he was being discharged was that his employment was "not working out." Unstated by the employer was the employer's conclusion that the claimant was too argumentative and had been insubordinate.

The final incident that led to the employer's decision to discharge the claimant occurred on August 5. In the morning, the business owner, Mr. Nelson, had set up a job for the claimant on a horizontal mill. However, the claimant was not familiar with the machine and did not know how to use the indexing head on the mill. Mr. Nelson had left the facility for the day, so the claimant could not ask for clarification or assistance. As a result, he determined to set up the job on another machine, a vertical mill. Even doing this, he made some errors and had to remill some of the shafts.

He realized that setting up the job on a machine different from that on which Mr. Nelson had set up the job was probably not going to be taken well by Mr. Nelson. As a result, when he went to break that day with some of the other employees, he made statements to the effect that he knew he was going to get fired anyway, so he did not care, he was going to do the job his way. When Mr. Nelson returned and learned what the claimant had done and what he had said, he determined he could no longer keep the claimant employed. However, he did allow the claimant to continue working through the end of that week.

The claimant established an unemployment insurance benefit year effective August 15, 2010.

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 that 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 that 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 that he was not working out and displayed in argumentative and insubordinate attitude. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. The claimant may not have lived up to the employer's expectations, but there is no evidence he intentionally failed to work to the best of his abilities. While the claimant's behavior on August 5 was not exemplary, particularly since the employer itself did not deem the conduct severe enough to necessitate immediate discharge but rather allowed the claimant to continue his employment through the remainder of the week, the employer has not established that the 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). While the employer had a good business reason for discharging the claimant, it 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2009 and ended March 31, 2010. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's November 19, 2010 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 she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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