IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JONATHON I HARPER
Claimant

ENSEVA LLC
Employer

APPEAL NO: 14A-UI-01569-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/29/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jonathan I. Harper (claimant) appealed a representative's February 5, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Enseva, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on March 11, 2014, and reconvened and concluded on April 2, 2014. During the hearing, Employer's Exhibits One through Five were entered into evidence. The claimant participated in the hearing. Lynn Smith, Attorney at Law, appeared on the employer's behalf and presented testimony from two witnesses, Chris Sevey and Doug Sevey. 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 or about October 1, 2012. He worked full time as a technical support person on the second shift in the employer's data center/server storage facility. His last day of work was December 31, 2013. The employer discharged him on January 2, 2014. The reason asserted for the discharge was lack of performance and inaccuracies in documentation.

On Monday, December 30 the claimant had prepared a weekly health check report indicating an inventory of equipment showing a warning light. The claimant's report included a machine that actually had been decommissioned, possibly with in the last week, and so was not in the stack and could not have been displaying a warning light. The employer concluded that this was likely due to the claimant paying insufficient attention to detail in his work because of spending too

much time watching non-productive videos or spending time texting on his cell phone. There had been a prior issue on or about December 10 where the claimant included a report of damage on some rack handles where in fact the damage had already been repaired since a prior report. While there had been verbal discussion with the claimant regarding this incident, the claimant had never been given any written discipline or advised that his job was in some jeopardy.

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 gravity of the incident and the number of prior violations and prior warnings are factors considered when analyzing misconduct. The lack of a current or clear warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is the incorrect report on December 30 after some prior concerns. Under the circumstances of this case, the claimant's failures were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and were good faith errors in judgment or discretion. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The claimant had not previously been effectively warned that future issues could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). While the employer may have 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.

DECISION:

The representative's February 5, 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.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css