IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DOUG L KNOKE
Claimant

PAUL PARK CO
Employer

APPEAL NO. 14A-UI-06970-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/08/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 871 IAC 26.8(2) – Request for Postponement

STATEMENT OF THE CASE:

Paul Park Company (employer) appealed a representative's July 3, 2014 (reference 01) decision that concluded Doug Knoke (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 29, 2014. The claimant participated personally. The employer provided a telephone number for the hearing. Prior to the hearing the employer requested a postponement because it would be out of town. The employer provided a number for the judge to call and speak with the employer about the postponement. The administrative law judge called the number twice and left messages but the employer did not return the administrative law judge's calls. The employer did not participate personally in the hearing. The employer's appeal letter was admitted into evidence as Exhibit D-1.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 30, 2013 as a full-time sheet rock worker, after completing an application for employment on December 23, 2013. On his application the claimant correctly indicated he studied carpentry at Iowa Lakes Community College in Emmetsburg, Iowa. The claimant correctly listed he had job skills at sheet rocking. The claimant graduated and last did sheet rocking over thirty years ago. The claimant believed he still possessed those skills.

The employer did not have a handbook and did not issue the claimant any written warnings. The claimant knew he was working slower than other workers. He did make a mistake during his two days of work on December 30 and 31, 2013, with regard to measurement. Two pieces had to be recut. The claimant was doing the best he could. The claimant did not work on January 1, 2014 because it was a holiday. On January 2, 2014 the employer told the claimant he was terminated because he was too slow, not up to standards, and cost the company a lot of money.

The claimant filed for unemployment insurance benefits with an effective date of June 8, 2014. The employer participated personally at the fact-finding interview on July 1, 2014 by Kenneth Rohlk.

On the day the hearing was scheduled, July 29, 2014, the employer left a message for the administrative law judge. The message was that there was an emergency and the employer had to leave town. The employer refused to tell the administrative law judge's clerk the nature of the emergency. The employer provided a number where the employer could be reached. The administrative law judge could not reach the employer to ascertain the nature of the emergency or record the call.

REASONING AND CONCLUSIONS OF LAW:

The first issue is the employer's request for postponement.

Iowa Admin. Code r.871-26.8(2) provides:

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tap-recorded by the presiding officer, and made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

The administrative law judge must have a postponement request in writing or a recording of that request in order to grant a postponement. This administrative law judge had neither. In addition, this request was made on the day of the hearing without any information about the emergency conditions that may or may not have existed. The three days required by the code were not available in this case. The employer's request to postpone the hearing is denied.

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent. The claimant's poor work performance was a result of his length of time since having worked with sheet rock. There was no evidence the claimant's application for employment contained any false information. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 3, 2014 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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