IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOHN H FRANZEN
Claimant

CBE COMPANIES INC
Employer

APPEAL NO: 14A-UI-04488-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/06/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John H. Franzen (claimant) appealed a representative's April 23, 2014 decision (reference 01) which concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from CBE Companies, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on June 3 and was reconvened and concluded on June 6, 2014. The claimant participated in the hearing. Misty Reinard appeared on the employer's behalf and presented testimony from three other witnesses, Carrie O'Brien, Kyle Coburn, and Sebira Hadzic. Two other witnesses, Jennifer Lassen and Mary Phillips, were available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One and 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:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on February 11, 2013. He worked full time as an AWG verifier in the employer's collections agency. His last day of work was April 4, 2014. The employer discharged him on that date. The stated reason for the discharge was manipulation of accounts.

On April 1 the claimant's supervisor, Coburn, inquired of him about some apparent irregularities in the claimant's accounts which made it appear that the claimant was manipulating accounts so as to count the activity in multiple periods. On April 2 the claimant came back to Coburn with an explanation. At about that same time one of the claimant's coworkers, Hadzic, came to O'Brien, Department Manager, and reported that on about March 26 she had some communications with

the claimant, both verbally and via Facebook messaging, in which he had indicated to her that he was doing things to manipulate his accounts; he asked her not to mention this to anyone else because it was at least “on the edge” and could get him into trouble. The employer determined to look further into the claimant’s accounts activities and discovered that the claimant was sometimes only half processing an account, holding the additional work on the account to another day, so he could claim account activities on both days, and that he was sometimes flagging accounts with a reminder to do additional work on a later date when the account work had already been maximized. These activities had the effect of making it appear that the claimant was doing more account work than he actually was, which allowed him to meet production goals more easily, and could possibly have led to earning a higher commission.

The claimant had previously been at least verbally coached and counseled about similar conduct. He had also received two prior written warnings for other issues. The employer does have a policy providing for discharge if an employee is issued a third written warning within a six-month period. As a result of the claimant’s actions on his accounts, particularly after the prior written warnings for other issues, the employer determined to discharge the claimant.

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); Iowa Code § 96.5-2-a.

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 claimant's intentional manipulation of the accounts to artificially inflate his work on the accounts shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 23, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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