

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MARK W MOERMAN

Claimant

and

SABRE COMMUNICATIONS CORP

Employer

HEARING NUMBER: 19BUI-06052

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Mark Moerman, worked for Sabre Communications Corp. from September 11, 2019 through June 27, 2019 as a full-time system administrator. The Claimant's job performance was generally satisfactory. There was a situation that arose in December of 2018 which the Claimant handled very well. At some point, the Employer began experiencing issues with the Claimant's job performance. Tasks weren't completed to his supervisors' satisfaction, i.e., lack of progress, focus on back-up, ERP systems and help desk tickets.

The Employer met with the Claimant to discuss the Employer's concerns and placed him on a performance improvement plan (PIP) on June 7, 2019, which the Claimant signed on June 10, 2019. The Claimant was directed to work with tech support and hardware vendors in setting up specific projects, one of which included the implementation of a back-up server for the Raleigh, North Carolina remote office to be completed by June 21, 2019. Mr. Moerman was to also focus on EPICOR issues, cross-training, back-up tickets. Should he complete all tasks, he was

supposed to request additional work. The Employer gave the Claimant 45 days to complete all points of the PIP.

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On June 20, 2019, the Employer held a follow-up meeting with the Claimant to check his PIP progress. The Claimant had successfully set up back-ups for the Sioux City, Iowa; Edmond, Oklahoma; and the Raleigh, North Carolina locations. It was determined at that time not make any further changes to the Raleigh location because the wrong hardware parts had been ordered. The Claimant had been doing weekly reboots, which the Employer directed him to discontinue. The Claimant had also complied with the Employer's directive to focus on EPICOR issues, cross-training, back-up tickets. He had completed the cross-training of another employee at the time of this meeting; thus, he had no need to request additional work. The Claimant worked to the best of his abilities. He had no prior warnings prior to the PIP.

On June 27th, the Employer determined the Claimant failed to meet performance expectations, namely timely completion of the Raleigh back-up system.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected

misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation.

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The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The record establishes the Claimant was put on notice that he needed to improve his job performance. Once he was made aware of his shortcomings, the Claimant immediately attempted to comply with the Employer's directives. Even the Employer testified he believed the Claimant worked to the best of his abilities, albeit not as quickly as the Employer preferred.

While the Claimant did not complete the back-up serve for the Raleigh location, he provided a cogent explanation as to why that particular project was not on target. The fact the correct hardware was not available in a timely manner was not wholly his fault. The Claimant never received any other prior warnings other than the PIP in which he was ultimately given only 14 days to comply. Based on this record, we conclude the Claimant's performance did not rise to the level of being an intentional or substantial disregard of the Employer's interests. Nothing in this record supports the Claimant acted carelessly or negligently; rather, the Claimant's failure to perform to the Employer's liking may be akin to "mere inefficiency...or good faith errors in judgment or discretion ...not be deemed misconduct..." See, 871 IAC 24.32(1) "a", supra. See also, *Richers v. Iowa Department of Job Service*, 479 N.W.2d 308 (Iowa 1991) wherein the court held that inability or incapacity to perform well is not volitional and thus, cannot be deemed misconduct.

DECISION:

The administrative law judge's decision dated August 30, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

Kim D. Schmett

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AMG/ss
DATED AND MAILED _____

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