IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRIS S GEORGE
Claimant

MASON CITY BUSINESS SYSTEMS INC
Employer

APPEAL NO. 11A-UI-12849-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/21/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Chris S. George (claimant) appealed a representative's September 22, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Mason City Business Systems, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2011. The claimant participated in the hearing. Mike Willard appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The claimant started working for the employer on December 15, 2008. He worked full-time as an account manager/territory representative in the employer's document management business. His last day of work was August 12, 2011. The employer discharged him on that date. The reason asserted for the discharge was failing to meet minimum activity standards.

The employer expected account managers/territory representatives to make at least 20 sales-related phone calls each day, and to have at least 12 sales related appointments per week. Prior to June 2011, the data had been recorded on Excel spreadsheets and reported in weekly reports to the employer. The claimant had never been counseled or warned that he had failed to meet the minimum activity standards while under this system.

In about June 2011, the employer switched over to a customer management database into which the account managers/territory representatives were to log their activity. The claimant had a fair amount of difficulty in adjusting to this new software, including problems such as where the addresses for some of his clients could not be entered into his reports because the zip code for the clients was in a zip code primarily assigned to another account manager/territory representative; that problem had not been resolved by August 12.

On about July 14, the regional sales manager, Willard, sent an email to all of the account managers/territory representatives indicating that from that point they would be judged by the information they reported on the new database. On August 11, in preparation for his regular Friday status meeting with the claimant, he checked the claimant's reporting on the database, and found that the claimant had only logged 18 phone calls and 14 appointments since July 14. He then prepared the discharge papers for the claimant.

In the August 12 discussion Willard presented the discharge papers to the claimant. The claimant then asked him if he had checked the database since the prior night, which Willard had not. The claimant had entered additional information onto the database on the evening of August 11. After looking at the database, Willard acknowledged that there was additional information on the database, but that he was proceeding with the discharge. He asserted at the hearing that the figures on the database were still insufficient, but he did not provide information as to what that data actually showed, nor did he address how the unresolved problems the claimant had with attempting to enter information into the database might have affected the numbers.

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

The reason cited by the employer for discharging the claimant is not hitting the minimum activity standards. Misconduct connotes volition. A failure in job performance is not misconduct unless

it is intentional. Huntoon, supra. There is no evidence the claimant actually had less than the necessary number of contacts, or that he intentionally failed to enter the information into the database. An inability to comply with the employer's expectations is not misconduct. 871 IAC 24.32(1)a. Further, the claimant had not previously been effectively warned that a failure to meet the standards result in immediate termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Under the circumstances of this case, the claimant's failure was, at worst, the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. 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 September 22, 2011 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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