

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DAVID M LEISINGER  
2156 – 270<sup>TH</sup> ST  
DENVER IA 50622

THE CBE GROUP INC  
PO BOX 900  
WATERLOO IA 50701-0900

Appeal Number: 05A-UI-03441-DT  
OC: 02/27/05 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to *reopen the record* at the address listed at the top of this decision, or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

David M. Leisinger (claimant) appealed a representative's March 25, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with The CBE Group, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2005. The claimant participated in the hearing. Mary Phillips appeared on the employer's behalf and presented testimony from two other witnesses, Jeff Simbric and Pam Brodsack. 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 October 1, 1989. For approximately the last two or three years, he worked full time as a database engineer in the employer's collection agency. His last day of work was March 3, 2005. The employer discharged him on that date. The reason asserted for the discharge was failing to take steps to prevent a loss of processing time.

The night of March 2, 2005, the claimant was assisting another employee in some scheduled system maintenance involving the removal of a board from the primary computer. Because of routine updates that would first need to run, the claimant and the other employer could not start the process until approximately 10:00 p.m. Once they had removed the board, they discovered that without the board in place, some storage area network management software was not functioning. After trying other options, they ultimately proceeded to reinstall the board. They did some testing and believed the process was back in working order. The claimant left at approximately 2:00 a.m. the morning of March 3, 2005. However, some problems still resulted because some of the routine updates had already attempted to run. The employer concluded that if the claimant had referred to some system check notations made by one of the claimant's coworkers, he could have avoided the problem, and therefore determined to discharge him. The claimant had not been aware of the notations; while he had advised the coworker who had made the notations, he was not aware of the preparation of any formal notations or where those notations might be.

The claimant had been given a verbal counseling most recently on January 7, 2005 for failing to clarify expectations of a verification process from what was set out in a written statement. He had also been given a warning on December 10, 2004 for failing to maintain adequate documentation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 Section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his failing to realize there were other system checks that should have been done on the night of March 2 and March 3, 2005. It is, in essence, a discharge for unsatisfactory job performance. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent. Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to take all reasonable steps known to him to avoid a system failure. Under the circumstances of this case, the claimant's failure to run the checks that might have disclosed the remaining problems was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer 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 March 25, 2005 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.

ld/kjf