

cost specialist as of May 3, 2004. He was still working full time in that position at the time of separation. He was discharged because his work did not meet the employer's standards.

Mr. Tisdale's job involved preparing various reports for internal use. The reports concerned such matters as management costs, staffing comparisons, and cost planning. The employer found that he needed a lot of help and instruction in performing his job. There was also a problem with reports not being submitted timely. Mr. Tisdale was first advised that he was not meeting the employer's standards in November of 2004. The matter was again addressed with him in March of 2005. When substantial improvement had not been shown, he was placed on an improvement plan.

On August 7, 2005, Mr. Tisdale was advised that he had 30 days in which to show improvement or he would be discharged. He indicated at that time that he needed more training to perform his job. He continued to ask questions of other specialist as he performed his job in an effort to meet the employer's standards. Mr. Tisdale was at all times working to the best of his abilities. When he had not demonstrated the needed improvement by September 7, he was given the option of resigning or being discharged. His inability to meet the employer's standards was the sole reason for the intended discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Tisdale was separated from employment for any disqualifying reason. He was given the option of resigning or being discharged. Under such circumstances, and individual who resigns is not considered to have voluntarily quit. See 871 IAC 24.26(21). Therefore, Mr. Tisdale's separation is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Mr. Tisdale was discharged for unsatisfactory job performance. The administrative law judge is satisfied that he was putting forth his best effort and at all times working to the best of his abilities. The fact that he required a lot of help and instruction persuades the administrative law judge that he did not have the ability to perform all aspects of his job to the employer's satisfaction. The administrative law judge does not believe Mr. Tisdale deliberately or intentionally failed to perform his job to the employer's standards. 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).

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983).

DECISION:

The representative's decision dated October 12, 2005, reference 01, is hereby reversed. Mr. Tisdale was discharged by UPS but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw