

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLENARD D MONROE**  
Claimant

**APPEAL NO. 16A-UI-03097-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN MAANEN TECHNOLOGY INC**  
Employer

**OC: 02/14/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Van Maanen Technology (employer) appealed a representative's March 4, 2016, decision (reference 01) that concluded Glenard Monroe (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Dillon Wright, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 17, 2015, as a full-time low voltage helper. The employer does not have a handbook. The claimant had two strokes prior to his employment. It affected his short-term memory and his eye-hand coordination. The employer knew about his medical condition when it hired the claimant. The claimant had not performed work of this sort for ten years prior to working for the employer.

The claimant's work quality was inconsistent. He forgot the directions the foremen gave him. He took notes, but could not read the notes or lost the notes. The claimant confused meeting times and locations. He forgot to open a ladder and set it up before using it. The claimant would lean it against a wall and sometimes fall from it.

On October 15, 2015, the employer issued the claimant a verbal warning for his quality of work and inability to follow instructions. The employer sent the claimant home with tools to practice his skills. On January 18, 2016, the employer issued the claimant a written warning for performance issues. The claimant incorrectly installed J-hooks. The employer notified the claimant that further infractions could result in termination from employment.

On February 9, 2016, the foreman showed the claimant twice where to install J-hooks at a job site. When the employer returned, the J-hooks were incorrectly installed and placed in the wrong locations.

The claimant filed for unemployment insurance benefits with an effective date of February 14, 2016. The employer participated personally at the fact-finding interview on March 3, 2016, by Dillon Wright.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). 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). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance may have been a result of his medical condition. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 4, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs