

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA E GUEVARA
Claimant

APPEAL NO. 07A-UI-03633-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

**OC: 03/18/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Maria E. Guevara (claimant) appealed a representative's April 6, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Rembrandt Enterprises, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2007. The claimant participated in the hearing. Ike Rocha translated the hearing. Jesus Lopez, the plant manager, and Jim Perkins, the human resource manager, 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 26, 2006. The claimant worked as a full-time line worker. The claimant's job required her to remove dirty eggs from the production line. The employer's policy requires employees to receive permission from a supervisor before the employee can leave the production line.

During her employment, the employer counseled the claimant numerous times about letting dirty eggs pass by her on the production line. The employer gave the claimant a written warning for this problem on February 19, 2007. The employer talked to the claimant or pointed out problems with dirty eggs again on February 27, March 3, and 13, 2007. The morning of March 16, the employer gave the claimant a warning for again allowing dirty eggs to proceed on the production line. This was the seventh time the employer counseled the claimant about this unsatisfactory job performance. The claimant was upset after the employer gave her this counseling and told her that a supervisor would work along side her to show her how to work efficiently and satisfactorily. The supervisor working with the claimant, W., did not speak Spanish. The employer has Spanish translators available, but concluded the claimant did not

need to work with a Spanish-speaking supervisor because W. was going to show the claimant what to do instead of telling her what to do.

The claimant did not appreciate working next to a supervisor. At one point, the supervisor left for a short time. When the supervisor returned, the supervisor told the claimant to leave the line. The claimant then went to the employer's human resource department. The claimant was very upset when she talked to the human resource associate.

A short time later, Lopez informed the claimant she no longer worked for the employer. The employer decided to end the claimant's employment because she left the production line to go to the human resource department without authorization and there were continual problems with the claimant's work performance because she continually allowed dirty eggs to proceed on down the production line.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The primary reason the employer discharged the claimant was because she allegedly left the production line without permission when she went to a human resource representative. The claimant's testimony that the supervisor working with her told her to leave the line must be given more weight than the employer's reliance on reports from a supervisor that did not testify at the hearing. As a result, a preponderance of the evidence indicates W. told the claimant to leave the line, which the claimant did. Even though the employer asserted W. did not have the authority to tell the claimant to leave the line, the employer did not have any testimony to contradict the claimant's testimony. The evidence establishes the claimant left the line after a supervisor, W., told her to leave.

The other reason the employer discharged the claimant was because she allowed dirty eggs to go on down the line. Based on the number of problems or times the claimant allowed this to occur, the claimant either did not understand what a "dirty" egg was or she did not know how to effectively and efficiently remove them from the line.

The employer established business reasons for discharging the claimant. The evidence does not establish that she committed work-connected misconduct. Therefore, as of March 18, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 6, 2007 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of March 18, 2007, the claimant is qualified to receive unemployment insurance benefits, provide she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw