IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JONATHAN C MERCHIAN
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL NO. 15A-UI-02255-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/01/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jonathan Merchian (claimant) appealed a representative's February 13, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Rembrandt Enterprises (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 24, 2015. The claimant participated personally. The employer participated by Pamela Winkel, Human Resources Administrative Training Specialist; Jeremiah Love, Operations Manager. The claimant offered and Exhibit A was received into evidence. 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 September 26, 2013, as a full-time blender operator. The claimant signed for receipt of the employer's handbook on September 26, 2013. The claimant was diagnosed with idiopathic hypersomnia on June 17, 2010. He notified the employer of the diagnosis when he was hired. On January 26, 2014, the claimant requested accommodations. The employer agreed to allow the claimant naps during breaks, to walk through the claimant's area more often, and tap the claimant on the shoulders. When an episode started to come upon the claimant he had anywhere from thirty seconds to five minutes before he became unconscious. During the period right before and right after he fell asleep, he was disoriented.

On April 21, 2014, the employer issued the claimant a written warning for falling asleep while working at a monitor. The monitor was on a catwalk four feet above pumps and valves. Also on April 21, 2014, the employer issued the claimant a written warning for falling asleep in a chair next to the desk at which he was working. The employer said the chair was in the path of a forklift. On October 12, 2014, the employer issued the claimant a written warning for tardiness.

On September 17, 2014, the employer issued the claimant a written warning for sleeping in his car on his break. The employer notified the claimant each time that further infractions could result in termination from employment.

On January 18, 2015, the claimant felt an episode coming on. In his mind he thought a tour might be coming through and did not want to be seen sleeping. He found a place on the catwalk where he could wedge his body between posts. The employer found the claimant asleep at 5:55 a.m. The employer terminated the claimant on January 21, 2015, for repeatedly and intentionally falling asleep in unsafe areas.

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance

benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of misconduct. The claimant provided information indicating he was unable to make clear decisions in the time prior to falling asleep. The employer did not dispute that information. The employer did not provide any accommodations for a safe zone in each area for the claimant to sit should an episode occur. The claimant made a decision without the aid of the employer about where to position himself while he was not thinking clearly. The employer did not meet its burden of proof to show intentional and deliberate misconduct. Benefits are allowed.

DECISION:

The representative's February 13, 2015, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/pjs