

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANNY GRAVES**

Claimant

**APPEAL NO. 11A-UI-08921-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**

Employer

**OC: 08/29/10**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Danny Graves, filed an appeal from a decision dated June 29, 2011, reference 05. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 28, 2011. The claimant participated on his own behalf and was represented by Michelle Van Wyhe. The employer, Rembrandt Enterprises, participated by Human Resources Manager Sally Brecher.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Danny Graves was employed by Rembrandt from April 11, 2011 until June 21, 2011 as a full-time packager. He had a work-related injury in May 2011 to his back for which he was receiving medical treatment and physical therapy.

On June 17, 2011, the claimant had an appointment with the physical therapist and the workers compensation physician, Dr. Archer. He told the therapist his leg was swollen and painful and she felt it was due to the original injury. When he was examined by Dr. Archer, he said he thought it might be due to the original injury but sent him for an x-ray and recommended that he "take a few days off" from work.

Mr. Graves called Safety Director James Perkins and said he would have to take a few days off because of complications from the work-related injury. After that call Dr. Archer examined the x-rays and said it was not, in fact, work related but that the claimant should still take a few days off. The claimant did not contact the employer again to say it was not work related.

In the meantime the medical office had contacted Mr. Perkins to ask if the visit the claimant had just had was under workers compensation claim. The employer said there was no first report of injury and it would not be paid for until there was an investigation. Later he spoke with

Dr. Archer who told him that it was determined the claimant's visit on that day was not due to any complications from the previous, work-related injury.

Mr. Graves returned to work on June 21, 2011, but said nothing to Mr. Perkins about the doctor changing his diagnosis on June 17, 2011. He was called to the office of Human Resources Manager Sally Brecher along with Mr. Perkins about his false report that his absences were due to the work-related injury. He readily acknowledged Dr. Archer had changed his diagnosis after he called absent but had not changed his recommendation he take a few days off.

The claimant was discharged because the employer believed he had falsified information given and tried to fraudulently claim a workers' compensation injury.

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

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.

The claimant was discharged because the employer believed he had falsified the reason for his absences after June 17, 2011, and claimed a work-related injury when one did not, in fact, exist. The record establishes the claimant was initially told it was related to his original back injury by the doctor and that diagnosis was subsequently changed after further examination, but the recommendation of taking a few days off did not change.

Although the claimant would have been prudent to notify the employer it was not, in fact, due to the workers compensation claim, he did not feel it was necessary as the recommendation for time off was still in effect. Mr. Graves' understanding of the situation was apparently confused and imperfect but this does not constitute a deliberate attempt to defraud the employer. He readily admitted on June 21, 2011, Dr. Archer had changed his original diagnosis and said it was not work related and he had simply not informed the employer of the change prior to taking the days off. The employer has failed to establish the claimant was guilty of willful and deliberate misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of June 29, 2011, reference 05, is reversed. Danny Graves is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css