

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIE D WILLIAMS
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL NO. 18A-UI-07718-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/24/18
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 16, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 8, 2018. Claimant participated personally. Employer participated by Lori Karr, Charo Marcos, Ann Sassman, Mary Beth Andrews, and employer representative Frankie Patterson. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 5, 2017. Employer discharged claimant on June 15, 2018 because claimant did not forward requested medical documentation surrounding claimant's ongoing medical leave despite repeated requests.

Claimant stopped working for employer after his non work-related hip problems became such that he needed to take time off. Claimant went to the doctor on November 9, 2017. After claimant went to the doctor, the doctor allegedly prepared a document on November 12, 2017, allowing claimant to return to work, with no restrictions. Claimant lost this document before delivering it to employer, so employer called the doctor's office to check on claimant's status. The doctor sent a document stating that claimant was allowed to return to "limited activities" as of November 14, 2017. As employer did not know what "limited activities" included or didn't include, employer attempted to get the doctor to clear up the situation. The medical representative stated that they didn't believe claimant should work at all, and wouldn't state activities claimant should be able to do.

Claimant did not return to work as he could not provide either a doctor's note stating that claimant had no restrictions and could return, or a note listing those activities claimant could do. Employer attempted many times over the next six months to try and get some time frame for claimant's return to work. Claimant didn't respond to employer's repeated certified letters

asking for updates as to his condition and progress. After employer had requested multiple times and claimant hadn't responded to the requests, including a final request telling claimant that he would be terminated if he didn't respond, claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The

conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning remaining in contact with employer while on a leave of absence. Employer had not had an official update as to claimant's medical condition or his prospects to return to work since November, 2017. Claimant was warned by employer that he would be terminated if claimant did not return employer's entreaties for responses.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew employer wanted a health update as employer hadn't heard from a medical professional for half a year concerning claimant's health. Claimant chose to not visit a doctor to get updated information regarding his progress and chose not to respond to employer's request in any way. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 16, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn