

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY CHALSMA
Claimant

APPEAL NO: 10A-UI-10435-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 06-13-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 13, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 18, 2010. The claimant participated in the hearing. Sally Breecher, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production supervisor of the non-food grade dryer for Rembrandt Enterprises from March 24, 2008 to June 11, 2010. On June 10, 2010, the claimant told the night shift supervisor that production was set up and ready to go but the valve on silo four was actually closed which resulted in egg baking onto the pasteurizer. The night shift supervisor and another employee tried to clean the pasteurizer two times without success and Supervisor John Lewallen called the claimant at 3:45 p.m. to inform him of the problem and then called him again at 6:30 p.m. to come back in and help clean the pasteurizer. The claimant, who was a salaried employee, refused to come in because he had dinner plans and later had to work for another employee at the bowling alley where he covered when someone was absent. The claimant did not consider returning to clean the pasteurizer because he "already worked that day and would be at work the next day" and he felt it was a one-person job to be performed by the second shift supervisor even though his supervisor, Mr. Lewallen, disagreed with him. The claimant believed his "day was over" and he did not understand why he was being called back to work. Mr. Lewallen told the claimant he wanted him to do it and the claimant asked what the second shift supervisor would be doing and Mr. Lewallen did not respond. A similar incident occurred June 3, 2010, when the claimant failed to open the valve to silo four or insure one of his staff opened the valve. The employer terminated his employment for stating everything was ready to go for the second shift when it was not which caused a loss of

production, time and product and for his refusal to come back in and help resolve the problem after being told to do so by his supervisor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

As a salaried employee, the claimant was expected to come in when called when the employer felt it was important and necessary that he be there, even if it was after the end of his shift. While the claimant may have disagreed with his supervisor's assessment of the situation and his need to return to work, that decision was his supervisor's to make, not the claimant's. Additionally, although the claimant was the production supervisor of the non-food grade dryer and as such had supervisory authority over other employees, he was ultimately responsible for his department on his shift but seems to deny that responsibility by saying he has to rely on other employees to do their jobs and placing blame for the valve on silo four being closed on one of them. The claimant made the same error one week earlier but it was caught before a major problem occurred. The fact the claimant made the same mistake twice in one week is troubling; the fact that he refused to accept responsibility for his error and come in and correct it when directed to do so by his supervisor takes the situation from a performance error to a case of willful misconduct. Consequently, the administrative law judge concludes the claimant's

conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The July 13, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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