

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK P WOLLENBURG**  
Claimant

**APPEAL NO: 10A-UI-03512-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 12/27/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's March 2, 2010 decision (reference 02) that held him ineligible to receive benefits because the employer discharged him for disqualifying reasons. A telephone hearing was held on April 2, 2010. The claimant participated in the hearing with his witness, Greg Elbert. Sally Brecher, the human resource manager, and Scott Wicks, the purchasing director, appeared on the employer's behalf.

The issues on the hearing notice were not correct. Before the hearing started, the parties agreed the issues noted on the hearing notice were not correct, but both parties were prepared to address the issue regarding the claimant's employment separation and did not want to continue the hearing. 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 a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 18, 2005. The claimant worked as a full-time agronomist. Wicks supervised the claimant. In April 2008, Wicks gave the claimant a corrective action plan. Part of the plan informed the claimant he was required to submit weekly reports and he could not undermine other employees or talk negatively about them.

Between April 15 and October 15, 2008, the claimant did not receive any written warnings. He had no idea his job was in jeopardy. On October 15, 2008, Wicks received a call from Elbert about one of the claimant's co-workers not doing her job. Wicks talked to the claimant that same day. The claimant admitted he made the comment that a co-worker was doing her job when he was asked why he was bypassing some fields. The claimant indicated the paperwork had to be processed by an employee and if a field was not in the computer, the claimant could not haul a load from that field. After Wicks talked to the claimant on October 15, the claimant

still had no idea his job was in jeopardy even though Wicks told him employees should not badmouth co-workers.

After talking to the claimant on October 15, 2008, Wicks decided to discharge the claimant for badmouthing an employee which Wicks considered insubordination and for unsatisfactory work performance. Wicks did not tell the claimant about his decision because he wanted to talk to the human resource department and other management personnel.

After the claimant scheduled a meeting to talk about some issues with Wicks on November 10, 2008, Wicks told the claimant he was discharged. Wicks only told the claimant the employer decided to end the claimant's employment relationship. The employer did not give the claimant specific reasons for the discharge. The employer paid the claimant three weeks of severance pay.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The evidence establishes the employer discharged the claimant for business reasons. The employer did not however, establish that the claimant committed work-connected misconduct. The evidence does not establish that claimant's comment about a co-worker is untrue. A factual comment to explain why he was unable to haul from certain fields does not, for unemployment insurance purposes, constitute work-connected misconduct. As a result, the claimant did not commit work-connected misconduct. Additionally, the primary reason for the claimant's discharge does not amount to a current act. Therefore, as of November 9, 2008, the claimant is qualified to receive benefits.

The record indicates the employer did not protest the claimant's employment when he initially filed a claim for benefit in November 2008. Since the employer did not protest the claimant's receipt of benefits in November 2008 and they were the only base period employee, it is

troublesome that the employer protested the claimant's receipt of benefits based on this same separation after the claimant filed a claim for a second benefit year.

**DECISION:**

The representative's March 2, 2010 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of December 27, 2009, the claimant remains qualified to receive benefits based on his November 10, 2008 employment separation. The employer's account remains subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css