

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TOBY H FIGUEROA
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL NO. 19A-UI-00723-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/30/18
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 January 18, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 8, 2019. Claimant participated personally. Employer participated by Susan Golwitzer.

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 January 4, 2019. Employer discharged claimant on January 4, 2019 because claimant allegedly committed a grievous error in not ensuring that the barn ventilation system had been reset thereby creating a situation that killed over 50,000 chicks.

Claimant worked as a barn maintenance supervisor for employer. Claimant oversaw other barn maintenance workers. On December 23, 2018 claimant was working in a barn full of chicks. As there was a problem with the ventilation system that had just recently been upgraded, claimant was to reset the barn ventilation system. Claimant did not reset the system, but instead asked someone else who'd worked maintenance in the old system to rest this system. The person claimant asked to reset the system hadn't been trained on the new system. After claimant asked the other person to rest the system, claimant did not make a walkthrough on the system to ensure that the ventilation system was now working, as he was to do procedurally. The system was not turned back on, the ventilation did not circulate air, and over 50,000 chicks died in short order.

Claimant stated that the co-worker had reset the previous system and that there weren't great differences between the two systems. Claimant also stated that computer difficulties made it so he couldn't ensure that the system was running again. Claimant further stated that the security officers could have checked the computers and found out that they weren't working in the barn,

but the security officers incorrectly assumed that the barn had been shut down and didn't check it.

Employer stated that the computer system was properly running and indicated that the ventilation system had not been running for three hours before it was discovered to still be off.

Employer did not give claimant any warnings prior to his termination.

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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning improperly performing duties as a maintenance supervisor resulting in the death of over 50,000 chicks. The last incident, which brought about the discharge, constitutes misconduct because of the catastrophic nature of claimant's omission and the resultant death. Claimant had great responsibilities as a part of his job and he was derelict in his duties not only through directing a person who was not properly trained to reset the ventilation system, but also through not checking to see if the system was operating by conducting a walk-through or checking it on the computer. 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 January 18, 2019, 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