

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M MARTINEZ

Claimant

APPEAL NO: 14O-UI-06466-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC

Employer

OC: 01/05/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 6, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the April 23 hearing with his attorney, Andrea Buckley. Sally Brecher, the human resource manager, and Pamela Winkle, a training specialist, appeared on the employer's behalf. Ike Rocha interpreted the hearing.

A May 5 decision held the claimant had not filed a timely appeal or established a legal excuse for filing a late appeal. Since the Appeals Bureau did not have legal jurisdiction, the February 6 determination was affirmed. See decision for appeal 14A-UI-03546. The claimant appealed this decision to the Employment Appeal Board. The Employment Appeal Board reversed the administrative law judge's decision and remanded this matter to the Appeals Bureau to address the merits of the claimant's appeal. See decision for appeal 13B-03546.

After the Employment Appeal Board remanded this matter, both parties were contacted to determine if they wanted another hearing to present additional evidence or if a decision should be made based on the evidence presented at the April 23 hearing. Both parties agreed they had presented all the evidence at the April 23 hearing and there was no need to present any additional evidence. (Note – the hearing on April 23 was an hour and 11 minutes.) Based on the evidence, the arguments of the parties presented on April 23, 2014, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2008. He worked full time as a white dryer operator. During his employment, the claimant unsuccessfully applied to become a lead trainer. The employer did not allow the claimant to become a lead trainer because of his unwillingness to train to employees.

On December 23, 2013, the claimant received a final written warning and a three-day suspension for a policy violation. The claimant received the suspension and final written warning after a new employee could not find his coat. The employer reviewed video and saw the claimant pick up a coat and throw it into the garbage. When the employer asked the claimant about the coat, he said he did not know where it was. The claimant asserted he picked up the coat, but put it on a cart. Based on the video, the employer concluded the claimant put the coat in the garbage and gave the claimant a written warning and a three-day suspension.

On January 3 or 6, 2014, the new employee told Winkle that work was not going very well. The employee felt that the claimant was cold and indifferent to him because the claimant would not talk to him or train him. Even though the claimant was not the lead trainer when a new employee is assigned to a team, everyone on the team is expected to help the new employee learn his job.

Winkler talked to the claimant and told him of the new employee's concerns. She talked about the claimant's future and that he had not been accepted as a lead trainer because he did not show a willingness to train other people. Winkle reminded the claimant that everyone is supposed to help everyone else because they were part of a team. The claimant appeared to understand and was receptive to the team concept. He told Winkler he did not have any problems with the new employee and things were good between them.

On January 8, the employer received a report that when the new employee came to work and asked the claimant a question, the claimant did not respond, but instead ignored the new employee. The new employee asked the employer to transfer him to another team. Another employee (not the new employer) reported the claimant swore at him on January 8.

When the new employee came to work on January 8, the claimant was operating a forklift and moving pallets. There was no production going on at that time. When Brecher talked to the claimant about the new employee's complaint, he admitted he had not answered the new employee's question. The claimant believed that a packager, which was the new employee's job, should know what he needed to do instead of the claimant telling him. The claimant did not believe it was his job to train packagers and he was not going to train anyone in the future. The claimant denied he swore at another employee.

Since the claimant's suspension was connected with the new employee, the employer concluded the claimant's refusal to answer the employee's question on January 8 was done in retaliation to the December 23 disciplinary action. The employer discharged the claimant on January 8, 2014.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant had in the past been unwilling to train employees, which was a reason the employer did not make him a lead trainer. Even though the new employee reported a communication problem with the claimant, it is not known if the claimant acted any differently toward the new hire than he acted toward anyone else. Although the claimant's comments to Brecher when she talked to him on January 8 did not help him, the claimant's failure to answer an employee's question when the claimant was operating a forklift does not establish that the claimant was retaliating against this person.

The claimant worked a number of years for the employer and knew or should have known his job was in jeopardy after he received the December 23 final written warning. Even though the claimant should not have ignored the new employee on January 8, the fact he did not answer a question when he was busy operating a forklift does not rise to the level of work-connected misconduct. The evidence suggests there was a personality conflict between the claimant and new employee which is supported by the new employee feeling indifference from the claimant. The employer established business reasons for discharging the claimant but the evidence does indicate the claimant committed work-connected misconduct. As of January 5, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's February 6, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of January 5, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css