

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FIDELIS O IKEFUAMA
Claimant

APPEAL NO: 11A-UI-01354-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

**OC: 01/09/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 2, 2011 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. Hearings were held on March 1 and 22, 2011. The claimant participated in the hearing with his witness, Tyrone Jackson. Darla Thompson, the human resource manager, and Greg Kemnitz, the safety director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 June 2009. He worked as a full-time tanker loader. The claimant understood the employer's safety policy required employees to wear a safety harness at all times when an employee worked on top of a tanker. The employer's progressive disciplinary policy informs employees they will receive a verbal warning, a first written warning, a second final written warning and a third warning results in an employee's discharge. The employer, however, has the discretion to skip steps of the disciplinary process depending on the severity or seriousness of an employee's infraction.

The employer gave the claimant a verbal written warning on July 6, 2010, after receiving a report from co-workers that the claimant was sleeping at work or on the line. The claimant was allegedly sleeping while the line was running. The employer received another report of the claimant sleeping at work and gave him a written warning on August 11, 2010. Instead of using the August 11 warning as the claimant's first written warning, the employer designated this warning as the claimant's second formal written warning or final warning. The claimant signed the warning, but did not agree that he had been sleeping at work. The employee(s) who made this report did not like the claimant.

There were no more problems until January 10, 2011. The claimant reported to work at 5:30 or 6:00 a.m. He was very busy doing different jobs. When Kemnitz walked out of his office at 7:50 a.m. he noticed the claimant was on top of the tanker without a safety harness. When the claimant was asked why he did not have his harness on, he admitted he forgot to put it on and got off the tanker to put on his safety harness.

Based on the warnings the claimant received in July and August, the employer gave the claimant his third formal written warning for a safety violation. Since this was his third warning, the employer discharged the claimant pursuant to its disciplinary policy.

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 employer established justifiable business reasons for discharging the claimant. The employer acknowledged that if the claimant had not received the other warnings for sleeping on the job, he would not have been discharged for failing to wear the safety harness on January 10, 2011. The claimant's failure in remembering to wear the safety harness is not condoned, but the facts do not establish that he claimant had a habit of failing to wear the safety harness. January 10 was the first time he forgot to put on the safety harness. As soon as Kemnitz reminded the claimant, he immediately went to get his safety harness and put it on. The employer's rule that employees must wear a safety harness all times while on a tanker is reasonable and is to protect employees from an injury. This isolated incident, however, does not rise to the level of work-connected misconduct. As of January 9, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's February 2, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit a

current act of work-connected misconduct. As of January 9, 2011, 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