

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOLANA K LENZ
Claimant

APPEAL NO. 09A-UI-18281-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

**Original Claim: 11/01/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 1, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on January 14, 2010. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section at 2:00 p.m. for an 8:00 a.m. hearing. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, 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.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer on August 16, 2004. She worked as a full-time floor person. Jose supervised the claimant.

During her employment, the claimant received warnings for unsatisfactory job performance. The most recent warning she received prior to her discharge was on July 6, 2009. The claimant received a three-day suspension in conjunction with this warning.

On October 26, 2009, the employer discharged the claimant in accordance with its policy. The claimant again received a warning for unsatisfactory job performance. The claimant understood employees could talk to one another if there were no eggs on the line. When there were eggs, the claimant understood she could not talk to anyone. On October 26, 2009, the claimant was

talking to a co-worker but there were no eggs on the line when she talked. Her supervisor gave the claimant a written warning for talking when there were no eggs coming down the line.

The employer received the hearing notice and responded to the hearing notice by contacting the Appeals Section and providing the names and phone number of who would be participating at the hearing. When the employer was called, the employer was not available and a message was left for the employer to contact the Appeals Section immediately.

The employer's primary witness forgot about the hearing because the employer had inspectors at its facility and the witness had been concerned with personal family matters the last few days. The employer requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The employer intended to participate at the hearing, but forgot about the hearing because of personal and business issues that occupied the primary witness's time and thoughts. Forgetting about a hearing does not, however, amount to a legal excuse or establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 presented during the hearing establishes that the employer had business reasons for discharging the claimant. The last incident that resulted in the claimant's discharge does not constitute work-connected misconduct. Therefore, as of November 1, 2009, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's December 1, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit a current act of work-connected misconduct. Therefore, as of November 1, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw