

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**EDUARDO QUIROZ-DIAZ  
1132 SENECA  
STORM LAKE IA 50588**

**REMBRANDT ENTERPRISES INC  
119 S MAIN ST STE 2  
MAQUOKETA IA 52060-3000**

**Appeal Number: 05A-UI-04767-JTT  
OC: 04/10/05 R: 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Rembrandt Enterprises filed a timely appeal from the April 27, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 31, 2005. Eduardo Quiroz-Diaz (claimant) participated in the hearing with the assistance of Spanish-English interpreter Rosie Paramo-Ricoy. Heidi Hermstad, Office Manager and Human Resources Representative, represented the employer. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eduardo Quiroz-Diaz was employed by Rembrandt Enterprises on a full-time basis from December 14, 2004 until April 11, 2005, when supervisor Todd Boettcher discharged him for misconduct

based on absenteeism. The sole absence upon which the employer based the decision to terminate Mr. Quiroz-Diaz occurred on April 11, when Mr. Quiroz-Diaz was a “no-call, no-show” for a scheduled shift. The employer has an attendance policy, pursuant to which one “no-call, no-show” is grounds for termination of employment.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Quiroz-Diaz was discharged for misconduct in connection with his employment based on one “no-call, no-show.” It does not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Mr. Quiroz-Diaz's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that the *unexcused* absences were excessive. See 871 IAC 24.32(7). A single unexcused absence does not constitute misconduct. See Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989).

Where an employee was a “no-call, no-show” for three consecutive shifts in violation of the employer's written policy, the employee may be deemed to have quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The evidence in the record establishes that Mr. Quiroz-Diaz was discharged based on one “no-call, no-show.” Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Quiroz-Diaz was discharged for no disqualifying reason. Accordingly, benefits are allowed, provided Mr. Quiroz-Diaz is otherwise eligible.

#### DECISION:

The representative's decision dated April 27, 2005, reference 01, is affirmed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/s