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

HAVEN HUGG
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ROQUETTE AMERICA INC
ATTENTION PAYROLL
1417 EXCHANGE ST
KEOKUK IA 52632-3910

Appeal Number: 04A-UI-01799-ET
OC 01-11-04 R 04
Claimant: Appellant (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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 10, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 9, 2004. The claimant participated in the hearing with Local President Steve Underwood. Tom Ross, Labor Relations Senior Group Manager, and Sheila Humes, Project Coordinator, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time refinery operator for Roquette America from August 24,

1992 to December 15, 2003. On August 14, 2003, the employer sent the claimant a letter stating it had spoken to his medical provider and had been advised not to allow the claimant to return to work because of a stress-related disorder. The employer indicated it would send short-term disability paperwork to the claimant and included a definition of the disability program the claimant would be covered under as "Total Disability, Totally Disabled – you are unable to do the essential duties of your occupation because of sickness or accidental injury. You are not totally disabled if you are at work for pay or profit with any employer. Based on this definition an employee will not be entitled to benefits if he or she works for pay or profit for another employer while absent from RAI while on a claimed disability." On October 14, 2003, the claimant submitted a continuance of disability payments form to the insurance company and indicated he had earned $800.00 since becoming totally disabled. On October 30, 2003, the employer met with the claimant to discuss the situation and requested that he provide additional information by 5:00 p.m. November 3, 2003, including how many projects he worked on, the dates of the projects, the customers' names, where the work was performed, the claimant's hourly rate, the nature of the work performed, payments received, and the time spent on each project. The claimant did not supply the information by that time and the employer extended the deadline to 8:00 a.m. November 4, 2003, at which time the claimant told the employer his attorney advised him not to provide the information. On December 5, 2003, the employer sent the claimant another letter offering him "one last opportunity to answer the written questions presented to you on October 30, 2003," and stated that if he did not respond to the questions by 5:00 p.m. December 15, 2003, the employer would "conclude you do not intend to answer these questions and that your answers, if received, would fail to validate the basis for your absence from Roquette and the interim pay you have received from the Company during this absence. Finally if no response is received from you, the Company will have no alternative but to conclude that you previously provided false information to the Company and have thereby defrauded the Company of monies not due you, which misconduct will result in your termination of employment from Roquette America, Inc." The claimant did not respond by December 15, 2003, and on December 17, 2003, the employer sent the claimant a letter terminating his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was on short-term disability because of work-related stress. On October 16, 2003, he returned a Proof of Continuance of Disability form to the insurance carrier indicating he made $800.00 as a self-employed home improvement provider. Upon receipt of that information, the employer attempted to further investigate the situation to determine if the claimant was violating the terms of his short-term disability claim. The claimant refused to provide any additional, specific information in response to the employer's repeated requests. The claimant maintains he was self-employed and while that might be true, his refusal to provide any information to the employer proving that he was self-employed gave the appearance that he was not being truthful and prevented the employer from determining the veracity of his claim. The issue is not whether the claimant was actually self-employed but whether the employer has the right to investigate and make the determination of his eligibility for short-term disability. The employer is not required to simply accept the claimant's unsubstantiated declaration that he is self-employed. The claimant agreed to the terms of the short-term disability agreement when he completed and signed the paperwork and accepted the payments, and his failure to provide reasonably requested information in regard to that claim, even knowing that his refusal would result in termination from employment, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The February 10, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/b