

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

MICHAEL G SHIPP
1726 E MILWAUKEE APT 10
STROM LAKE IA 50588

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

Appeal Number: 05A-UI-05180-DWT
OC: 04/10/05 R: 01
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Rembrandt Enterprises, Inc. (employer) appealed a representative's May 5, 2005 decision (reference 02) that concluded Michael G. Shipp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2005. The claimant participated in the hearing. Josh Warkentin, the plant manager, testified on the employer's behalf and Heidi Hermstad was available to testify. Based on 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 2, 2004. The claimant worked as a full-time production worker. Warkentin was the claimant's supervisor.

On November 27, the claimant and a co-worker, L., completed a change of work schedule indicating the claimant would work on November 30, 2004, a day he had not initially been scheduled to work. L. had been scheduled to work on November 30, but she had a scheduled appointment and asked the claimant to work this shift for her.

On November 30, the claimant did not feel well and left a message on L.'s cell phone asking her to come to work when she could so he could leave and go home. When the claimant called the employer prior to the shift, he learned the employer was short one person. The claimant reported to work on November 30, 2004, at 7:00 a.m. The claimant worked until L. came to work around 10:00 a.m. The claimant thought that when L. got to work, he could leave. The claimant did not feel well and told the employer he was ill. When the employer disregarded the claimant's comment that he was ill and required the claimant to stay until the end of the shift, the claimant made the decision to leave work. Although the employer tried to talk to the claimant before he left the parking lot, the claimant would not talk to the employer.

After the claimant left work, he stopped at a store to pick up over-the-counter remedies for stomach flu and then went home. The employer informed the claimant later that day, that the claimant could sign his termination papers the next day. The employer discharged the claimant on November 30, 2004 because the claimant left work early without authorization.

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).

The evidence does not reflect any problems with the claimant's work from 7:00 a.m. to 10 a.m. While the claimant may not have felt well, the evidence does not establish that he was so ill he

could not work. The claimant's failure to talk to Warkentin before he left the premises amounts to a substantial disregard of the standard of behavior the employer has a right to expect from an employee. The facts indicate the claimant decided he could go home after L. came to work and disregarded the employer's instructions. Even though the claimant may not have felt very good, he worked three hours and there is nothing in the record indicating he could not have worked the entire shift. The claimant did not provide proof of his illness to the employer or at the hearing. A preponderance of the evidence establishes the claimant committed work-connected misconduct on November 30, 2004. As of April 10, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 5, 2005 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 10, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf