

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TODD M GRAHAM**  
Claimant

**APPEAL NO. 11A-UI-03310-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 02/06/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Todd Graham (claimant) appealed a representative's March 11, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Rembrandt Enterprises (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 13, 2011. The claimant participated personally. The employer participated by Darla Thompson, Human Resources Manager, and Greg Kemnitz, Safety Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 4, 2008, as a full-time brake plant maintenance worker. The claimant signed for receipt of the employer's handbook on August 6, 2009. The employer did not issue the claimant any warnings prior to termination.

The claimant was trained in procedures for lock-out/tag-out (LOTO). He understood he was supposed to place his tag in a position to keep the machine from running while performing maintenance on the machine. The claimant and his supervisor often placed each other's tags in LOTO position.

On February 10, 2011, the claimant was going to work on a machine with his co-worker. The claimant handed his partner his tag, asked him to LOTO and then leave to retrieve a tool. The claimant started working on the machine and the coworker left without following LOTO procedures. The safety manager entered the room and notified the claimant of the violation. The coworker walked into the room and placed the claimant's tag in the proper place. Later that day the employer terminated the claimant for violating the procedure. The co-worker was not reprimanded.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant, his coworker and his supervisor all followed the same procedure of placing the tag for the coworker. Of those three workers, only the claimant was discharged. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 11, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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