

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME MIRAMONTES
Claimant

APPEAL NO. 12A-UI-06348-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 05/06/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Rembrandt Enterprises Inc. filed a timely appeal from a representative's decision dated May 22, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a hearing was scheduled for and held on June 25, 2012. Mr. Miramontes participated personally. The employer participated by Ms. Sally Brecher, Human Resource Manager and Ms. Kayla Jensen, Assistant Manager. Claimant's Exhibits A and B were received into evidence. Employer's Exhibits One through Sixteen were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jaime Miramontes was employed by Rembrandt Enterprises Inc. from May 16, 2011 until May 7, 2012 when he was discharged from employment. Mr. Miramontes was employed as a full-time preventative maintenance worker and was paid by the hour. His immediate supervisor was Kayla Jensen.

Mr. Miramontes was discharged on May 7, 2012 after he failed to provide an available doctor's note to the employer verifying his need to be absent on May 3 and May 4, 2012. Because of repetitive attendance issues with Mr. Miramontes, the employer had required the claimant to provide a doctor's note supporting his need to be absent from work and had repeatedly warned the claimant about his unsatisfactory attendance. Mr. Miramontes was aware that failure to provide a doctor's note for days that he claimed to be absent would result in the days being considered unexcused and would jeopardize his employment with the company. On May 7, 2012 when Mr. Miramontes returned from his most recent absences on May 3 and May 4, 2012 his supervisor, Ms. Jensen, asked the claimant whether he had a doctor's excuse for his most

recent absences and the claimant replied, "No,...I did not want to go." Based upon previous warnings that had been served upon the claimant and his apparent failure to provide a doctor's note excusing his most recent absences, Mr. Miramontes was discharged from employment. The employer later concluded that Mr. Miramontes did have a doctor's note but chose not to present it stating to other employees that he wished to be discharged and draw unemployment. The employer obtained statements from witnesses regarding Mr. Miramontes statements. (See Exhibits Fourteen, Fifteen and Sixteen). The employer also called the clinic where Mr. Miramontes had been seen for his May 3 and 4 absences and verified that Mr. Miramontes had in fact been seen and had received a doctor's note for those dates.

It is Mr. Miramontes position that he presented the doctor's note and was discharged by Ms. Jensen. Subsequently after becoming aware that the employer believed that Mr. Miramontes had contrived a reason to be discharged, Mr. Miramontes confronted two of the witnesses and provided them a statement prepared in advance by Mr. Miramontes and required them to sign the statements. (See Claimant's Exhibits A and B).

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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 this unusual case the claimant was required to provide a doctor's note to verify the medical need for absences after he had been repeatedly absent and repeatedly warned by the employer regarding his attendance. The claimant was absent on May 3 and May 4 and properly called in to report his impending absences and was aware he was required to provide a doctor's note before returning to work. Although Mr. Miramontes had visited a doctor and had received a doctor's note, the claimant stated to his immediate supervisor that he did not have a doctor's note to cover his most recent absences as he had, in effect, chosen not to get a doctor's note. Based upon previous warnings that had been served upon him, Mr. Miramontes was discharged from employment.

The evidence in the record reflects that Mr. Miramontes did visit a medical practitioner and did receive a doctor's note but chose not supply it to the employer, previously indicating to other workers his intention to be discharged and draw unemployment insurance benefits. The claimant was discharged based upon his failure to provide a doctor's note and not because of the after required information that the claimant had a note but had chosen not to present it.

The administrative law judge concludes that the claimant's willful failure to provide documentation that was available to support his need to be absent showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the Iowa Employment Security Law.

The administrative law judge finds the weight of evidence to be established in favor of the employer based upon the employer's record of attempting to work with Mr. Miramontes to keep the claimant employed by providing the claimant an alternative to being discharged by supplying medical documentation and because of the reasonableness of the employer's actions taken after discharge to determine whether Mr. Miramontes in fact did have a doctor's note in this matter. The administrative law judge also notes that Mr. Miramontes personally confronted two witnesses who provided statements to the employer requiring the witnesses to sign statements that Mr. Miramontes had provided for them in advance.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under disqualifying condition. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated May 22, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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