

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jake Burton was employed by Ferguson from April 4 until August 17, 2005. He was a full-time picker on the third shift.

Mr. Burton received progressive discipline for attendance and performance during the course of his employment. The final written warning was given on August 15, 2005, and it notified him his job was in jeopardy if he missed any more work.

On August 16, 2005, Third-Shift Supervisor Shane Witt noticed the claimant had been missing from his work area for some time and went in search of him. Eventually the claimant was located sleeping in the restroom. The supervisor woke him up and sent him home, informing him the supervisor would be consulting with Facility Manager Sean Donahue the next day.

Mr. Witt did report to Mr. Donahue the next morning at the end of his shift and the facility manager was reviewing the claimant's personnel record when Mr. Burton showed up to talk to him. The claimant admitted he had been sleeping on the job, asserting only that he was having "personal problems." Mr. Donahue notified the claimant he was being discharged.

Jake Burton filed a claim for unemployment benefits with an effective date of August 14, 2005. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he 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.

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 claimant had been advised his job was in jeopardy as a result of his poor attendance and work performance. In spite of the warning the claimant absented himself from his regular work duties to go and sleep in the restroom during his shift. He was not only absent from work during this time but claiming pay for work he did not perform while he was sleeping. This is dishonesty and theft which is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of September 7, 2005, reference 01, is reversed. Jake Burton is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/pjs