

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALEX R CUNNINGHAM**  
Claimant

**APPEAL NO. 24A-UI-04636-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOOD LLC**  
Employer

**OC: 04/07/24  
Claimant: Appellant (2)**

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Iowa Code Section 96.5(2)(a) & (d) – Discharge

**STATEMENT OF THE CASE:**

On May 13, 2024, Alex Cunningham (claimant) filed a timely appeal from the May 9, 2024 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer’s account of liability for benefits, based on the deputy’s conclusion that the claimant was discharged on March 28, 2024 for sleeping on the job. After due notice was issued, a hearing started on May 31, 2024 and concluded on June 11, 2024. Claimant participated. Caroline Semer of Equifax represented the employer on May 31, 2024 and Lucie Reed of Equifax represented the employer on June 11, 2024. Edgar Garcia testified on behalf of the employer. Exhibits A and B were received into evidence. Employer’s Exhibit 1 was not served on the claimant and was not admitted into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Alex Cunningham (claimant) was employed by Osceola Food, L.L.C. as a full-time “Line Runner” in the Ham Pack Department from December 2022 until April 11, 2024, when the employer discharged him from the employment for sleeping on the job. Mr. Cunningham last performed work for the employer on March 28, 2024. At 12:45 p.m. on March 28, Mr. Cunningham started his lunch break. Mr. Cunningham was due to return to the line 30 minutes after starting his lunch break, which would mean he was due to return at 1:15 p.m. During the break, Mr. Cunningham was feeling tired. The employer’s written work rules prohibited sleeping on the job, but the prohibition did not include a prohibition against sleeping during a break. At the start of the employment, Mr. Cunningham received a handbook that included the sleeping policy. Mr. Cunningham was aware of the policy. On March 28, Mr. Cunningham went to a dimly lit area adjacent to a break room and sat down on the floor behind a pallet. Mr. Cunningham took initial steps toward setting his alarm so that he could return to the line on time, but Mr. Cunningham did not take the final step to activate the alarm.

Mr. Cunningham then went to sleep. Mr. Cunningham ended up lying on the floor while he was asleep. Mr. Cunningham did not wake in time to return to the production line at the scheduled end of his break. Instead, Mr. Cunningham awoke at 1:30 p.m. to see supervisors and a coworker standing above him. The employer escorted Mr. Cunningham to the human resources office. Mr. Cunningham showed the employer that he had taken steps to set his alarm. Mr. Cunningham told the employer he had taken a prescription medication that made him feel tired that day but that had not previously affected him in that manner. Mr. Cunningham had taken a prescribed anxiety medication prior to reporting to work that morning. The employer suspended Mr. Cunningham from the employment. On April 11, 2024, the employer notified Mr. Cunningham that he was discharged from the employment, based on the sleeping incident.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 87124.32(4).

Sleeping on the job may constitute misconduct that would disqualify a claim for unemployment insurance benefits. See *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986). In *Hurtado*, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart.

The evidence in the record establishes a discharge for no disqualifying. The evidence establishes the claimant did not intentionally sleep through the end of his scheduled lunch break in connection with the isolated incident on March 28, 2024. The claimant intended to sleep only during the break, but forgot to take the final step when setting his alarm. The employer's work rules did not prohibit sleeping during the break. The evidence fails to establish a knowing violation of the employer's sleeping policy. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The May 9, 2024 (reference 01) decision is REVERSED. The claimant was discharged on April 11, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

June 12, 2024  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.