

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL P ZUBER**  
Claimant

**APPEAL NO. 09O-UI-09865-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**Original Claim: 03/29/09  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Michael Zuber, filed an appeal from a decision dated April 17, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 27, 2009. The claimant participated on his own behalf and with witness Karen Hickman. The employer, Per Mar, participated by Operations Manager Derek Burkeybile.

**ISSUE:**

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

**FINDINGS OF FACT:**

Michael Zuber was employed by Per Mar from March 2, 2007 until March 30, 2009 as a full-time security guard. He worked 4:00 p.m. until midnight in a guard shack at a client's facility. Part of his job duties entailed logging in and out the shuttle buses. At the time of hire, he received a copy of the employer's policies. The progressive disciplinary procedure calls for discharge of any employee who receives three written warnings in a 12-month period.

He had received written warnings on January 13 and 14, 2009, for being two hours late for work on January 11, 2009, and 40 minutes late on January 14, 2009. This was due to oversleeping. At that time, Mr. Zuber mentioned to Operations Manager Derek Burkeybile he was being treated for depression.

On March 25, 2009, a shuttle bus driver notified on-site supervisor Danny Connell that the claimant had been sleeping in the guard shack. The driver had come to the shack at 5:15 p.m. and the claimant did not come out to check his documents. The driver had to leave the bus, physically pound on the door of the shack and then enter, where he had to vigorously shake Mr. Zuber in order to get him to awaken.

Mr. Connell reported to Mr. Burkeybile and was instructed to investigate. The shuttle bus driver was interviewed and the information passed to the operations manager. The claimant was

discharged on his next scheduled day of work on March 30, 2009. Mr. Zuber stated he had fallen asleep because he had been suffering from insomnia and had not slept well the past few nights. He was not taking any medication that accounted for him falling asleep. He had not talked to Mr. Connell or Mr. Burkeybile about taking a medical leave until his problem could be resolved because he could not afford to be off work.

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

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.

As a security guard, the claimant had the responsibility to monitor people and vehicles entering and leaving the client's premises. The fact that he was so soundly asleep during his shift that the shuttle driver had to enter the guard shack and physically shake him meant he was not in a proper condition to perform his job duties as required. He was not taking any medication that would have made him drowsy, it was merely that he had not slept well the past few days. He had the option to call in absent if he felt too tired to do his work, or get medical documentation from a physician to give to his employer and request some kind of accommodation.

Mr. Zuber's conduct jeopardized the client's property and the employer's business relationship with the client. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of April 17, 2009, reference 01, is affirmed. Michael Zuber is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw