

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JASON C FIEDLER  
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MT PLEASANT IA 52641

WEST LIBERTY FOODS LLC  
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PO BOX 318  
WEST LIBERTY IA 52776

Appeal Number: 05A-UI-02168-H2T  
OC: 01-30-05 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2005. The claimant did participate. The employer did participate through Carrier Malin, Human Resources Supervisor. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance mechanic full time beginning July 26, 2004 through January 26, 2005 when he was discharged. On January 25, 2005, William Wheeler and Jade Lafferty, both also maintenance mechanics, witnessed the claimant sleeping at the parts desk.

When Mr. Wheeler went and got Mr. Lafferty, they both observed the claimant with his eyes closed sleeping before Mr. Wheeler hit the desk with his hand to wake up the claimant. The statements submitted by the claimant are admittedly from individuals that did not witness the events. The claimant had been previously been suspended for three days for sleeping on the job in August 2004. The claimant admits that he was sleeping on the job in August 2004. Sleeping on the job is prohibited by the employer.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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).

Sleeping on the job on two occasions, one year apart can constitute job misconduct. Hurtado v. IDJS, 393 N.W.2d 309 (Iowa 1986).

The statements submitted by the employer from the eyewitnesses of the event are more credible than the testimony of the claimant and his statements from individuals who were not present when the event occurred. There is no reason for the employer's witnesses to fabricate that they observed the claimant sleeping on the job. In light of the claimant's previous history of sleeping on the job, this second occurrence of sleeping on the job constitutes sufficient misconduct to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The February 24, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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