

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARED W SOMMERFELT
Claimant

LEE COUNTY
Employer

APPEAL 20A-UI-01644-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On February 21, 2020, the employer filed an appeal from the February 11, 2020, (reference 03) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2020. Claimant did not register for the hearing and did not participate. Employer participated through director Travis Solem and was represented by attorney Michael Heilman. Employer's Exhibits 1 through 6 were received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 17, 2018. Claimant last worked as a full-time dispatcher. Claimant was separated from employment on March 29, 2019, when he resigned in lieu of termination.

Employer is a public safety answering point. Employer takes emergency calls from every resident in Lee County and also dispatches emergency personnel within the county.

Employer has a policy prohibiting sleeping on the job. The policy states an employee will be disciplined the first time sleeping on the job, and will be terminated if caught sleeping on the job again. Claimant was aware of the policy.

On March 23, 2019, claimant was working and fell asleep. Two dispatchers who were working with claimant heard him snoring and had to wake him up. The dispatchers reported what occurred to director Travis Solem.

On March 29, 2019, Solem confronted claimant. Claimant stated he could not recall whether he fell asleep but acknowledged he “could” have done so. Employer informed claimant he was going to be terminated for sleeping on the job. Claimant decided to resign instead.

On December 17, 2018, claimant was given a written warning for sleeping on the job. At that time, Solem asked claimant if there was any help or assistance he needed in order to stay awake on the job. Claimant denied needing any assistance and did not disclose any medical condition that caused him to fall asleep.

Claimant has not received any payments of unemployment insurance benefits since filing a claim with an effective date of December 29, 2019.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, this case will be analyzed as a discharge as claimant had no choice but to resign or be terminated.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The issue is whether claimant was terminated for job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant fell asleep on the job after being warned. Claimant had not disclosed any medical condition that would have caused him to fall asleep and his actions could have put the lives of others in jeopardy. Claimant's actions were in violation of employer's policy and a previous warning. Employer established claimant was separated from employment for disqualifying misconduct.

Claimant has not received any benefit payments since filing his claim. Therefore, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The February 11, 2020, (reference 03) unemployment insurance decision is reversed. The claimant was separated 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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March 16, 2020
Decision Dated and Mailed

cal/scn