

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS L HANCOCK**  
Claimant

**APPEAL NO. 09A-UI-10081-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PAPETTI'S OF IOWA**  
Employer

**Original Claim: 05/31/09  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Papetti's of Iowa (employer) appealed a representative's June 29, 2009 decision (reference 01) that concluded Dennis Hancock (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 30, 2009. The claimant participated personally. The employer was represented by Jennifer Coe, Hearings Representative, and participated by Auby Ninemire, Supervisor of Safety and Training. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 14, 2006 as a full-time maintenance mechanic. The claimant signed for receipt of the employer's handbook on December 14, 2006. The employer issued the claimant a written warning on February 11, 2008, for sleeping on the job even though it was during his break. The employer notified the claimant that further infractions could result in termination from employment. After the warning the claimant understood he could not sleep on a break but he could sleep on his lunch time.

On May 26, 2009, the claimant clocked out for lunch at 3:00 a.m. He ate and rested. He clocked back in at 3:30 a.m. as he was scheduled. The employer terminated the claimant on June 1, 2009, for sleeping during his lunch time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

#### **DECISION:**

The representative's June 29, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw