

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

GREGORY E NEWTON

Claimant,

and

YALE ENFORCEMENT SERVICES INC

Employer.

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HEARING NUMBER: 09B-UI-08592

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that while the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W. 2d 219 (Iowa App. 1983.)

While it is common for an employer to maintain an employee on the job pending the hire of a replacement, under unemployment compensation law, the employer must prove that the claimant's actions were current at the time of the actual discharge. Because sleeping on the job would generally be considered misconduct (see, Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986)), the fact that the employer allowed the claimant to remain employed for two weeks after the infraction detracts from the currentness of the act and renders the claimant's behavior not so troublesome. The retention of the claimant weakens the employers' argument that the claimant's conduct rises to the level of termination since the termination was not immediate. See, Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) wherein the court held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis.

The employer would be better served by immediately addressing any and all inappropriate behavior immediately, particularly in instances that could lead to termination. Quick response in the way of written and or verbal warning of inappropriate behavior should be addressed at time of infraction. The lack of evidence of a current act without the specifics failed to prove that the claimant exhibited misconduct. Based on the foregoing, I would agree that the claimant should be allowed benefits.

Monique F. Kuester

AMG/fnv