

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DRAKE RETZLAFF

Claimant

APPEAL 21A-UI-14843-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 10/25/20

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 30, 2021, Drake Retzlaff (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 28, 2021 (reference 02) that denied unemployment insurance benefits based on a finding claimant was discharged on April 9, 2021 for sleeping on the job.

A telephone hearing was held on August 24, 2021. The parties were properly notified of the hearing. The claimant participated personally. Claimant listed as witnesses Jerry Zapata and Nick Gonzales. Whirlpool Corporation (employer/respondent) participated by HR Associate Logan Kiefer. HR Specialist Eric McGarvey participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time material handler. Claimant's first day of employment was October 9, 2012. The last day claimant worked on the job was March 8, 2021. Claimant's immediate supervisor was Jessica Christopher. Claimant was discharged on April 12, 2021.

The most recent incident that led to discharge occurred on March 8, 2021. On that date, Christopher found claimant asleep in a forklift truck during working hours. Claimant met with McGarvey shortly thereafter and acknowledged he had accidentally fallen asleep for ten or fifteen minutes while waiting to receive his next assignment.

This was due at least in part to a sleeping disorder. Claimant notified his immediate supervisor of this diagnosis in approximately 2013 but had not informed anyone else at employer about this or requested an accommodation since. Claimant had on several prior recent occasions while working felt himself starting to nod off. During those occasions he would drive his fork-lift truck to a quiet area and “nod off” for ten or fifteen minutes. He did not report to employer that this was occurring until he was found asleep on March 8, 2021. Employer does not allow employees to sleep during work unless they are in a break room or in their personal vehicle.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated June 28, 2021 (reference 02) that denied unemployment insurance benefits based on a finding claimant was discharged on April 9, 2021 for sleeping on the job is **AFFIRMED**.

Iowa Code section 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 disqualification shall continue 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 provides in relevant part:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

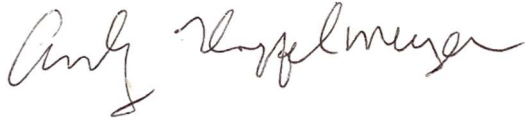
Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

The administrative law judge is sympathetic to claimant's situation. However, an employee cannot simply decide to fall asleep at work at any time without notifying his employer. This is true even where, as here, the sleeping was due to a medical issue. Claimant should have told employer what was happening and worked through an interactive process to determine whether an accommodation could be made. Instead, claimant did not inform employer of the issue until he was found sleeping. Claimant's notifying employer of his diagnosis nearly a decade earlier was not sufficient to put employer on notice that he was recently needing to fall asleep at work. Employer did not allow employees to sleep in the circumstances claimant was, due at least in part to the obvious danger in doing so in claimant's work environment. For these reasons benefits must be denied.

DECISION:

The decision dated June 28, 2021 (reference 02) that denied unemployment insurance benefits based on a finding claimant was discharged on April 9, 2021 for sleeping on the job is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 1, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.