

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT A MAPLE

Claimant

TPI IOWA LLC

Employer

APPEAL NO: 13A-UI-02738-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 26, 2013 reference 01 that held he was discharged for misconduct on January 22, 2013, and benefits are denied. A telephone hearing was held on April 3, 2013. The claimant participated. Danielle Williams, HR Coordinator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on October 17, 2011 and last worked for the employer as a full-time production employee on January 22, 2013. Claimant received the employer policy. It provides that sleeping on the job is a termination offense.

Claimant worked the D-shift from 5:30 p.m. to 5:30 a.m. He was a drill operator. The employer discharged claimant for sleeping on the job on January 22. The employer had witnesses claimant fell asleep while working at his drill on January 21. Although claimant admits he had dozed-off in the past, he denies he fell asleep on January 21. He had not been disciplined for any similar conduct in the past.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 22, 2013 for a single incident of sleeping on the job.

The employer did not offer the claimant's supervisor or any written statement from co-workers regarding observations of the claimant sleeping on the job. The employer had the power to offer such evidence, and its failure to do so may be inferred against it. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). Generally, a single incident of sleeping on the job does not constitute job disqualifying misconduct. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986).

DECISION:

The department decision dated February 26, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on January 22, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs