

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAYMOND W BRYNGELSON
Claimant

APPEAL NO. 24R-UI-05452-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GARLING CONSTRUCTION INC
Employer

OC: 03/03/24
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The matter is before the administrative law judge pursuant to an Employment Appeal Board remand for a new hearing. On June 6, 2024, Raymond Bryngelson (claimant) filed a timely appeal from the April 2, 2024 (reference 01) decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the IWD deputy's conclusion the claimant was discharged on February 29, 2024 for sleeping on the job. After due notice was issued, a hearing was held on July 2, 2024. Claimant participated. Brittany Hunt, Office Manager, represented the employer. Exhibits A and B were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

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

Raymond Bryngelson (claimant) was employed by Garling Construction, Inc. as a full-time, salaried Project Manager from August 2022 until February 29, 2024, when the employer discharged him from the employment for allegedly sleeping on the job.

The employer alleges four instances in which Mr. Bryngelson fell asleep at his desk during working hours. The employer alleges the incidents occurred on December 18, 2023, and on February 19, February 26 and February 27, 2024. For each alleged incident, the employer alleges that Mr. Bryngelson was seated at his office desk with his head tilted back. In connection with the December 18, 2023 alleged sleeping incident, the employer alleges a colleague took a 20-second video to document the sleeping incident. In connection with the February 19 and 26 incidents, the employer alleges a colleague took a photo of Mr. Bryngelson asleep in his chair at his desk. With regard to the alleged January 27, 2024 final incident, the employer alleges the business owner walked past Mr. Bryngelson's open office door and observed Mr. Bryngelson seated at his desk, head tilted back and asleep. The employer does not allege that Mr. Bryngelson intentionally slept at work.

Mr. Bryngelson is a morbidly obese person and suffers from sleep apnea for which he uses a CPAP machine.

In November 2023, Mr. Bryngelson's doctor prescribed a seizure medication to Mr. Bryngelson as an "off label" appetite suppressant. Fatigue is a potential side effect of the medication. On February 23, 2024, the doctor doubled the dosage of the medication after noting that Mr. Bryngelson had tolerated the medication without side effects. Mr. Bryngelson was unaware that he was experiencing any side effects from the medication and therefore did not notify the employer that he had been prescribed the medication.

Mr. Bryngelson routinely operated a company truck without incident.

Despite the employer's alleged concerns that Mr. Bryngelson was nodding off at work, the employer elected not to address these concerns with Mr. Bryngelson until February 29, 2024, at which time the employer discharged Mr. Bryngelson from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Sleeping on the job may constitute misconduct that would disqualify a claim for unemployment insurance benefits. See *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986).

The evidence in the record establishes a February 29, 2024 discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to meet its burden of proving a discharge for misconduct in connection with the employment. The employer witness did not observe the alleged sleeping incidents. The employer elected not to present testimony from anyone who allegedly observed the claimant sleeping at work. The employer alleges the existence of a video recording and a two photographs showing the claimant asleep at work but elected not to submit the alleged documentation as proposed exhibits for the appeal hearing. Even if the claimant had nodded off at work on one or more occasions, the evidence would still fail to establish that the claimant knowingly or intentionally slept at work. Rather, the evidence indicates health issues that might predispose the claimant to nodding off. Even if the claimant had unintentionally nodded off at work, the employer failed to bring the alleged concerns to the claimant’s attention prior to the discharge date, which denied the claimant a reasonable opportunity to amend the alleged behavior. The employer also presented insufficient evidence to establish that the claimant at any point operated the employer’s truck in an unsafe manner. Because the evidence fails to prove an intentional violation of an employer work rule, the evidence fails to establish misconduct in connection with the employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The April 2, 2024 (reference 01) decision is REVERSED. The claimant was discharged on February 29, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

July 10, 2024

Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.