

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID VANDERBROEK
Claimant

APPEAL NO: 11A-UI-06124-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**OC: 04/10/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

David Vanderbroek (claimant) appealed an unemployment insurance decision dated May 2, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Van Diest Supply Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2011. The claimant participated in the hearing. The employer participated through Carolyn Cross, Personnel Manager; Clark Vold, Director of Manufacturing; and Earl Vold, Night Manager. Employer's Exhibits One through were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production operator from September 26, 2005 through April 6, 2011 when he was discharged for sleeping on the job after being warned. The employer's policy prohibits sleeping or malingering on the job. The claimant was previously suspended for five days from November 26, 2006 through December 1, 2006 for sleeping on the job on both November 21, 2006 and November 22, 2006. He was warned that further instances would result in disciplinary termination up to and including termination of employment.

Night Manager Earl Vold found him sleeping on the job on April 5, 2011 at 12:50 a.m. in the air mill room. The claimant was sitting on an empty five gallon bucket, leaning up against the wall with his head slumped over and his eyes closed sleeping. Mr. Vold watched the claimant for one minute before he pushed opened the door. The claimant woke up and denied that he was sleeping.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on April 6, 2011 for repeated policy violations after he was caught sleeping on the job on April 5, 2011. Sleeping on the job is prohibited and the claimant was previously warned on November 27, 2006.

Sleeping on the job may constitute misconduct that would disqualify a claimant for unemployment insurance benefits. See Hurtado v. IDJS, 393 N.W.2d 309 (Iowa 1986). In Hurtado, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart. The claimant's sleeping on the job shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as

defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 2, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs