

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY L YOUNG**  
Claimant

**APPEAL NO: 09A-UI-10037-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CON AGRA**  
Employer

**OC: 06/07/09**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Con Agra (employer) appealed a representative's July 2, 2009 decision (reference 01) that concluded Terry L. Young (claimant) was qualified to receive benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2009. The claimant participated in the hearing. Ken Olson, Tony Smith and Jennifer Murphy appeared on the employer's behalf. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in October or November of 2004. He worked as a full-time third shift line mechanic. Smith supervised the claimant.

On July 1, 2008, the claimant received a written warning and a three-day suspension for sleeping on the job. The claimant understood the employer considered sleeping on the job as a major infraction.

On June 1, 2009, between 5:15 and 5:30 a.m., the claimant went into an office where a lead person, A.B., was doing work on a computer. The claimant had work he had not completed but was interested in learning how to log onto a computer. The claimant sat in a chair next to A.B. While A.B. was doing work on the computer, the claimant nodded off. He put his head down on his chest. After the claimant had nodded off, Smith and Olson walked by and noticed the claimant sleeping. Smith kicked the door and the claimant did not react. After Smith and Olson walked into the office, the claimant raised his head. The claimant indicated A.B. was giving him some computer training. Smith was not satisfied with this response because the claimant had work that had not been complete. Olson talked to A.B. and questioned him about why he allowed the claimant to stay in the office.

Later on June 2, Smith again talked to the claimant. He asked the claimant to explain why he had been in the office when he still had work to do. A.B. told the employer that he had not been training the claimant on the computer. Instead, the claimant had come into the office on his own accord to waste some time.

On June 3, 2009, the employer discharged the claimant for again sleeping on the job and for not being honest about the reason he was in the office.

The claimant established a claim for benefits during the week of June 7, 2009. He filed for and received benefits since June 7, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant asserted he only nodded off and was not sleeping. However, when Olson and Smith saw the claimant he exhibited signs that he was asleep by having his head on his chest and he failed to respond to the noise Smith made when he kicked the door. Since the claimant had work to do, there was no logical reason for him to have gone into the office that morning. It is not known if A.B. was truthful when he told the employer he had not been training the claimant on the computer because neither the claimant nor the employer called him as a witness. After the claimant received a three-day suspension for sleeping on the job in July 2008, he knew or should have known the employer did not allow employees to sleep on the job without some disciplinary consequence. Based on the facts presented in the case, the claimant committed work-connected misconduct when he went into the office and nodded off to sleep when he still had work to do. As of June 7, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since June 7, 2009, the issue of overpayment will be remanded to the Claims Section.

#### **DECISION:**

The representative's July 2, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 7, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided

he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs