

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUKAS J SNYDER

Claimant

APPEAL NO. 14A-UI-12577-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/09/14

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 26, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on January 5, 2015. Claimant Lucas Snyder participated. Bill Brauer, Warehouse Manager, represented the employer and presented additional testimony from Alisha Weber. Exhibits One through Nine were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the purpose of determining whether the employer participated in the fact-finding interview and determining whether the claimant engaged in fraud or dishonesty in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lukas Snyder was employed by Casey's Marketing Company as a full-time warehouse worker from 2008 until October 22 2014, when the employer discharged him for sleeping on the job, for time theft, and for violating the employer's attendance policy. Mr. Snyder was assigned to the overnight shift, from 6:00 p.m. to 4:30 a.m. During the shift, Mr. Snyder would get two paid 15-minute breaks and a 30-minute unpaid lunch break. The employer's policy prohibited Mr. Snyder from leaving the premises without permission while he was on the clock.

The incident that triggered the discharge occurred in the early hours of October 20, 2014, during a shift that started on the evening of October 19, 2014. Mr. Snyder took his regular 15-minute break that evening. Mr. Snyder took his 30-minute lunch break sometime between 11:00 p.m. and midnight. Mr. Snyder clocked back in after his lunch break. Shortly thereafter, Mr. Snyder went to his vehicle, which was parked in the employer's parking. Mr. Snyder's ostensible purpose in going to the vehicle was to get a jacket or coat. Mr. Snyder's duties included work in a drive-through freezer. Mr. Snyder had an employee locker and knew he should have taken his coat inside when he arrived for work so that he would not have to take an extra trip to his vehicle. Mr. Snyder knew he was required to notify a supervisor before he left the building, but did he did not notify a supervisor before he went to his vehicle. While Mr. Snyder was at his vehicle, he decided to take an unauthorized break to smoke a cigarette. While Mr. Snyder was taking the unauthorized break, he fell asleep. The supervisor could not locate Mr. Snyder in the plant. At about 2:30 a.m., the supervisor located Mr. Snyder asleep in his vehicle in the parking lot. The supervisor sent Mr. Snyder home. On October 22, 2014, the employer met with Mr. Snyder and discharged him from the employment.

In making the decision to discharge Mr. Snyder from the employment, the employer considered prior attendance matters. The employer did that because the employer viewed Mr. Snyder's unauthorized absence from the workplace on the October 20, 2014 to be an attendance matter in addition to a violation of other work rules. The most recent actual attendance matter that factored in the discharge occurred in 2011.

Mr. Snyder established a claim for benefits that was effective November 9, 2014 and received \$3,328.00 in benefits for the eight-week period of November 9, 2014 through January 3, 2015.

On November 25, 2014, an Iowa Workforce Development claims deputy conducted a fact-finding interview to address Mr. Snyder's separation from the employment. Alisha Weber, Unemployment Insurance Consultant with Equifax Workforce Solutions, represented Casey's. No one from Casey's participated. Ms. Weber provided an oral statement and submitted six proposed exhibits. One of the exhibits was a two-page document in question and answer form. That document provided the dates of employment and a details statement of the incident that triggered the discharge. The answers set forth in the document had been provided by Bill Brauer, Casey's Warehouse Manager. Another document contained the policies the employer deemed Mr. Snyder to have violated.

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.

Iowa Admin. Code r. 871-24.32(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.

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 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 871 IAC 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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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). In Hurtado, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart.

The evidence in the record establishes misconduct in connection with the employment. The weight of the evidence indicates that Mr. Snyder intentionally violated multiple employer policies to get to the point where the employer found him sleeping in his car at a time when he was on the clock. Mr. Snyder left the facility without authorization. Mr. Snyder took an unauthorized smoke break. Mr. Snyder lingered in his vehicle to take the unauthorized smoke break.

Mr. Snyder placed himself in a situation where he could fall asleep at a time when he was supposed to be working. Mr. Snyder remained asleep for upwards of two and a half hours. Mr. Snyder's conduct demonstrated a willful and wanton violation of the employer's work rules and standards of conduct that employer reasonably expected of Mr. Snyder. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Snyder was discharged for misconduct. Accordingly, Mr. Snyder is disqualified for benefits 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. The employer's account shall not be charged for benefits.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$3,328.00 in benefits for the eight-week period of November 9, 2014 through January 3, 2015. The employer participated in the fact-finding interview within the meaning of the law through the presence of the Equifax representative and the submission of documentation, which, if unrefuted, was sufficient to establish misconduct in connection with the employment. Because the employer participated in the fact-finding

interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits already paid for future benefits.

DECISION:

The November 26, 2014, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The claimant was overpaid \$3,328.00 in benefits for the eight-week period of November 9, 2014 through January 3, 2015. The claimant must repay that amount. The employer's account will not be charged for benefits already paid and will be relieved of liability for future benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css