

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS C TIMM
Claimant

APPEAL NO. 17A-UI-11462-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHN DEERE COMPANY
DEERE & COMPANY**
Employer

**OC: 10/08/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Chris Timm filed a timely appeal from the October 30, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Timm was discharged on October 6, 2017 for sleeping on the job. After due notice was issued, a hearing was held on November 29, 2017. Mr. Timm participated. Kate Ferree represented the employer.

ISSUES:

Whether Mr. Timm was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance 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: Chris Timm was employed by John Deere Company, a/k/a Deere & Company, on a full-time basis during two distinct periods. The first period of employment began in 2003 and ended on June 10, 2015. The second period of employment began on July 28, 2015. In connection with Mr. Timm's return to the employment on July 28, 2015, Mr. Timm and the employer executed a last chance agreement that was to continue in place for three years. Mr. Timm continued in the employment until October 6, 2017, when Kate Ferree, Labor Relations Administrator, discharged Mr. Timm from the employment for sleeping on the job. At the time of the discharge Mr. Timm was an X60 Mechanic. Mr. Timm's immediate supervisor was Team Leader Vince Craycroft. Mr. Timm's work hours were 6:00 a.m. to 2:30 or 4:30 p.m., Monday through Friday. Mr. Timm was to receive a 15-minute paid break from 9:00 to 9:15 a.m. and a 30-minute unpaid lunch break from 11:30 a.m. to noon.

The incident that triggered the discharge occurred at about lunch time on September 28, 2017. On that day, Team Leader Ryan Spomer was substituting as Mr. Timm's supervisor. During the morning, Mr. Timm worked on a time-sensitive project. Due to delays not of Mr. Timm's making, he began his lunch break 10 minutes late, at 11:40 a.m. Mr. Timm had a desk in his work area,

was allowed to take his breaks at his desk, and took his lunch at his desk that day. At some point, Mr. Timm unintentionally dozed off while seated in his chair at his desk. Because he had fallen asleep, Mr. Timm did not recommence working at the appropriate time following his lunch break. At 12:25 p.m., Mr. Stomer found Mr. Timm slouched down in his chair with his head tilted back. Mr. Stomer enlisted another Team Leader, Adam Eich, to serve as a witness to Mr. Timm sleeping on the job. The pair woke Mr. Timm. Upon awakening, Mr. Timm was initially groggy and disoriented regarding the time of day. Mr. Timm subsequently returned to his duties and completed his shift. Shortly after they woke Mr. Tim, Mr. Eich and Mr. Stomer each sent an email message to the employer's Labor Relations staff set forth the particulars of what had occurred. Mr. Timm returned to work on Friday, September 29 and performed his work duties without incident.

During the next Monday through Thursday, October 2-5, 2017, Mr. Timm was absent from work pursuant to previously-approved intermittent leave under the Family and Medical Leave Act (FMLA). Mr. Timm suffers from diabetes, coronary disease and associated fatigue. The previously approved intermittent FMLA leave was based on Mr. Timm's serious health condition. Mr. Timm's health issues were likely a significant factor in Mr. Timm unintentionally dozing off at his desk on September 28, 2017.

When Mr. Timm returned to work on October 6, 2017, he found that his employee badge would not work to allow him access to the workplace. Mr. Timm was then summoned to a disciplinary meeting that included members of the management and union representatives. During the meeting, Mr. Timm acknowledged that he had slept on September 28 and added that he must have dozed off. The employer has a written code of conduct that prohibits sleeping on the job. Based on that prohibition, and based on the July 2015 last chance agreement, the employer moved forward with discharging Mr. Timm from the employment on October 6, 2017. The September 28, 2017 sleeping incident and the 2015 last chance agreement were the sole bases for the October 6, 2017 discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 fails to establish misconduct in connection with the September 28, 2017 sleeping incident. The evidence in the record establishes that Mr. Timm did not knowingly and intentionally go to sleep that day, but instead unintentionally dozed off while sitting at his desk. The employer concedes that Mr. Timm most likely just dozed off and did not intentionally go to sleep. In order to find misconduct, there must be a volitional act. There was no volitional act here. The evidence fails to establish a current act of misconduct. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Timm was discharged for no disqualifying reason. Mr. Timm is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The October 30, 2017, reference 01, decision is reversed. The claimant was discharged on October 6, 2017 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

Decision Dated and Mailed

jet/rvs