

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUFINO RUIZ**  
Claimant

**APPEAL NO. 09A-UI-18546-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**Original Claim: 11/08/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Rufino Ruiz (claimant) appealed an unemployment insurance decision dated December 7, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Schenker Logistics, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2010. The claimant participated in the hearing. Ike Rocha interpreted on behalf of the claimant. The employer participated through Mr. Kim Paul, Human Resources Associate. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer and battery-changer from August 18, 2008 through November 12, 2009. He was discharged for sleeping on the job one time on November 8, 2009.

**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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on November 12, 2009 for one incident of sleeping on the job. The employer's work rules provide that sleeping on the job is grounds for immediate termination. Repeated occurrences of sleeping on the job can be misconduct, but a single incident does not necessarily constitute misconduct. See Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). The claimant did not have a history of sleeping on the job and no other disciplinary history was provided. Given the circumstances, the administrative law judge is inclined to characterize the incident of November 8, 2009 as an isolated instance of

negligence rather than deliberate misconduct. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated December 7, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/kjw