

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN J LEWIS**

Claimant

**APPEAL NO. 11A-UI-14312-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERE & CO – DELAWARE**

Employer

**OC: 10/02/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kevin J. Lewis filed a timely appeal from an unemployment insurance decision dated October 25, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held November 30, 2011, with Mr. Lewis participating. The employer, Deere & Company, did not respond to the notice.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Kevin J. Lewis was employed by Deere & Company from June 14, 2004, until he was discharged September 29, 2011. He last worked as a buildings and grounds carpenter on the third shift.

Mr. Lewis began taking doxycycline for bronchitis on September 23, 2011. During his shift on the early morning of September 24, 2011, he developed a severe headache. The headache was made worse by the bright fluorescent lights in Mr. Lewis' work area. He laid down in a dark area and was massaging his head to relieve the symptoms when he was spotted. The person who found Mr. Lewis believed that he was sleeping. The matter was referred to human resources. Mr. Lewis was discharged on September 29, 2011, because of the event.

Mr. Lewis had not contacted management prior to lying down. No maintenance supervisor works on the third shift, and Mr. Lewis did not know how to contact other managers in the plant. Mr. Lewis' physician later advised him to discontinue the doxycycline.

**REASONING AND CONCLUSIONS OF LAW:**

The question here is not the advisability of the company's decision to discharge Mr. Lewis. It is whether the evidence in this record is sufficient to establish that the discharge was because of misconduct in connection with the employment.

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.

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, the party with the burden of proof, did not participate in the hearing. See Iowa Code section 96.6-2. The evidence does not establish that Mr. Lewis was sleeping. While his actions and his failure to contact management were ill-advised, the administrative law judge concludes that they amount to an isolated instance of poor judgment. No disqualification is imposed.

#### **DECISION:**

The unemployment insurance decision dated October 25, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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