

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN D O'LEARY**  
Claimant

**APPEAL NO. 07A-UI-04340-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN HOME SHIELD CORP**  
Employer

**OC: 04/01/07 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ryan O'Leary filed an appeal from a representative's decision dated April 19, 2007, reference 01, which denied benefits based on his separation from American Home Shield Corporation (AHS). After due notice was issued, a hearing was held by telephone on May 15, 2007. Mr. O'Leary participated personally and was represented by Stuart Cochrane, Attorney at Law. The employer participated by Tonya Weber, Purchasing Manager, and by Summer Boes and Karla Brown, Purchasing Supervisors. The employer was represented by Kellen Anderson of Talx Corporation. Exhibits One through Ten were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. O'Leary was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. O'Leary was employed by AHS from January 30, 2006 until March 28, 2007 as a full-time purchasing agent. He was discharged for sleeping on the job.

On November 8, 2006, Karla Brown observed Mr. O'Leary with his head down and his eyes shut. She admonished him that he needed to be alert and ready to perform his job. On January 17, Ms. Brown again observed him at his desk with his eyes shut, head down and hands crossed. She observed him for a few minutes but there was no movement. Mr. O'Leary's telephone was logged into his voicemail. When asked if he was tired, he responded that he was listening to his voicemail. The voice mail usually contained information concerning complaints about vendors and also orders from contractors. Mr. O'Leary was not taking notes of any kind during the time Ms. Brown observed him. He was advised that he would be receiving a warning for the conduct. The warning, which stated that he was sleeping on the job, contained an area designated "Associate Comments." Mr. O'Leary signed the warning without comment on January 17, 2007.

On March 21, Tonya Weber observed Mr. O'Leary asleep at this desk. When questioned, he indicated he had been up all night. He indicated he had consumed a bottle of Nyquil and could not sleep. He was given a written warning on that date, which he signed without noting any comments or disagreement with the facts stated by the employer. The decision to discharge Mr. O'Leary was prompted by the fact that he was again sleeping on the job on March 28. Summer Boes was advised by another employee that Mr. O'Leary appeared to be sleeping. Ms. Boes observed him with his eyes closed while leaning back in his chair with his hands behind his head. When questioned, he indicated that he did not recall sleeping that day.

At 8:41 a.m. on March 28, Mr. O'Leary sent an e-mail to Ms. Brown indicating that May 25 would be his last day of work. He indicated he would be entering military service. When he was being questioned on March 28 about sleeping, he was asked if he had intended to return to AHS after military service. After he indicated he did not intend to return, he was told his resignation was being accepted immediately.

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

Although Mr. O'Leary submitted a resignation to be effective May 25, 2007, he was discharged on March 28, 2007. It was not the resignation that prompted the discharge but his conduct at work. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. O'Leary was discharged for sleeping on the job. He had been warned both verbally and in writing that such conduct was contrary to the employer's standards and might subject him to discharge. In spite of the warnings, he continued to sleep while at work. He signed both written warnings that indicated he was being disciplined for sleeping on the job. Mr. O'Leary could have noted on the warning his disagreement with the facts found by the employer but did not do so. When confronted on the final incident, he did not deny sleeping. He only indicated he could not recall sleeping that day. He had just been warned about sleeping at work on March 21 when he was again observed sleeping on March 28. The administrative law judge is satisfied from the eyewitness accounts that Mr. O'Leary was, in fact, sleeping on March 21 and March 28.

Sleeping on the job constitutes a substantial disregard of the standards an employer has the right to expect. See Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). As such, it constitutes misconduct within the meaning of the law. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proof in this matter. Accordingly, benefits are denied.

#### **DECISION:**

The representative's decision dated April 19, 2007, reference 01, is hereby affirmed. Mr. O'Leary was discharged by AHS for misconduct in connection with his employment.

Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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