

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONES A BIYOYOUWEI
Claimant

APPEAL NO. 13A-UI-06198-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK CO
Employer

**OC: 04/21/13
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 13, 2013 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2013. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through human resources supervisor Luis Meza. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on April 9, 2013. His last day of work was March 13, 2013 when he was found sleeping on the job. He denied the allegation and was suspended pending investigation. He did not respond to the employer's communication attempts. The investigation revealed he was seated with his head down when he should have been looking at the metal detector screen. A loud alarm sounded indicating the presence of metal in the pet food product. It was not turned off for a while so the supervisor went to reset the alarm and found claimant with his head down and arms were resting on his knees. He went to find others to go with him to wake up the claimant. They had to clap their hands loudly to awaken him. The elapsed time was about five minutes. His head was not positioned so he could view the conveyor belt.

When the alarm sounds, the product piles up. The policy calls for immediate termination because of the potential safety and product contamination consequences of sleeping on the job. The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309 (Iowa 1986).

Although claimant denied sleeping, the greater weight of the evidence establishes that he did and that he did not attempt to conceal himself while doing so, which indicates there was no intention to fall asleep. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating this work rule. The work rule was reasonable and the claimant violated it. The employer had a right to follow its work rule. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the claimant did not have the requisite level of intent or negligence for his conduct to qualify as misconduct under Iowa law, in part because the conduct for which claimant was discharged was merely an isolated incident of poor judgment and the employer had not previously warned claimant about the issue leading to the separation and has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 13, 2013 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs