

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON D CLARK
Claimant

APPEAL NO. 14A-UI-06853-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEAN FOODS NORTH CENTRAL LLC
Employer

OC: 07/07/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 24, 2014, reference 03, decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on July 24, 2014. Claimant Jason Clark participated. Tom Halpin, of Equifax Workforce, Solutions represented the employer and presented testimony through Mark Cramer and Luann Jager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, Three, Five, Six and Seven into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview within the meaning of the law.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Clark was employed by Dean Foods North Central, L.L.C. as a full-time robot operator/fork lift operator from November 2013 until May 19, 2014 when the employer discharged him for allegedly sleeping on the job. Mr. Clark's work hours were 1:00 p.m. to 9:30 p.m. Chad Smith, Shipping Warehouse Supervisor, was Mr. Clark's immediate supervisor.

The final incident that triggered the discharge allegedly occurred on May 15, 2014 and came to the attention of Mark Cramer, Shipping Warehouse Manager, on May 16, 2014. On May 15, forklift operator August Risner reported that he had observed Mr. Clark sleeping on the forklift. Mr. Risner asserted that other employees had observed the same behavior. The employer subsequently requested and obtained written statements from Mr. Risner and two other employees. Mr. Risner wrote that he had witnessed Mr. Clark sleeping while the machine Mr. Clark was supposed to be operating was beeping. A second employee, Nick Draham, wrote that he saw Mr. Clark standing with his back against some pallets sleeping. Another employee,

Brad Blair, wrote that he observed a couple indications that production had stopped, went to investigate, and observed Mr. Clark learning on some boxes sound asleep. Mr. Blair indicated in his written statement that he had awakened Mr. Clark. The employer suspended Mr. Clark on May 19 and had him return for an investigative interview the next day. Mr. Clark provided a written statement. Mr. Cramer asked Mr. Clark whether he had any medical conditions that would cause him to be tired at work. Mr. Clark advised that had sleep apnea, but no other medical condition. When Mr. Cramer asked Mr. Clark whether he was engaged in anything out of the ordinary in his off-duty hours, Mr. Clark mentioned that he had been working on his house. Mr. Clark mentioned that he had dozed off during a training meeting two weeks earlier, but denied that he had ever slept on the production floor. Mr. Cramer continued the suspension until May 27, 2014, at which time Mr. Cramer discharged Mr. Clark from the employment. The employer's work rules included a prohibition against sleeping during working hours. Mr. Clark was aware of the rule.

REASONING AND CONCLUSIONS OF LAW:

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.

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 employer failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove misconduct in connection with the employment. The employer did not present testimony from any of the three employees who claimed to have observed the alleged conduct that triggered the discharge. The employer had the ability to present such testimony, but elected not to present such testimony. The weight of the evidence fails to prove that Mr. Clark slept during working hours on May 15, 2014. Even if the employer had presented sufficient evidence to establish that Mr. Clark had dozed off during his shift on May 15, the evidence still would not have indicated that such action was intentional on the part of Mr. Clark.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Clark was discharged for no disqualifying reason. Accordingly, Mr. Clark is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Claims Deputy's June 24, 2014, reference 03, decision is affirmed. The claimant was discharged 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

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