

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM J NIEDERT
Claimant

APPEAL NO. 14A-UI-05882-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 05/04/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

William Niedert filed a timely appeal from the May 28, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on July 1, 2014. Mr. Niedert participated personally and was represented by attorney Nathan Schroeder. Tiffany Adams represented the employer and presented additional testimony through Barbara Murphy. Exhibits One and A through D were received into evidence.

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: William Niedert was employed by ABCM Corporation as a part-time housekeeper from 2011 until April 22, 2014, when Tiffany Adams, Human Resources Coordinator, and Barbara Murphy, Administrator, discharged for sleeping on the job. On the day in question, Mr. Niedert was performing cleaning duties while seated at a table in a dining room when he either unintentionally dozed off or suffered a syncope episode. When the employer noticed Mr. Niedert at the table, he was still in a seated position with the item he had been working on still in his hand. The employer roused Mr. Niedert and told him he was discharged from the employment based on the employer's zero tolerance policy for sleeping on the job.

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.

Regardless of whether Mr. Niedert dozed off while working or suffered an episode of syncope, the weight of the evidence indicates that Mr. Niedert did not *intentionally* do either. Mr. Niedert was in plain sight, seated at what was at that moment his work station, with the work at hand still in hand. This isolated incident of *unintentional* sleep or syncope did not constitute misconduct in connection with the employment for purposes of determining unemployment insurance benefit eligibility. Mr. Niedert is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's May 28, 2014, reference 01, decision is reversed. 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

jet/pjs