

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHARLES W LUCAS**  
Claimant

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**APPEAL 19A-UI-06383-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Charles W. Lucas, filed an appeal from the August 5, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 5, 2019. The claimant participated personally. Rodney Coffman testified on behalf of the claimant. The claimant listed potential witnesses Cindy Giese, Lisa Lucas and Michael Sams when he registered but elected not to call them as witnesses. The employer, Thomas L. Cardella & Associates Inc. participated through Barbara Toney, hearing representative with Talx. Employer witnesses included Mark Grego and Jessica Aayla. Employer Exhibits 1-3 and Claimant Exhibits A-D were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed full-time as a customer care agent and was separated from employment on July 17, 2019, when he was discharged for sleeping on the job (Employer Exhibit 2).

When the claimant was hired effective March 11, 2019, he was trained on employer rules and procedures. The employer has a written policy that warns employees that sleeping during work hours will be grounds for discipline including discharge (Employer Exhibit 1). Prior to discharge, the claimant was given a written warning on July 3, 2019 for sleeping on the job (Employer Exhibit 3).

The claimant informed the employer that due to personal issues outside of work, he had been struggling with adequate sleep. He acknowledged he had fallen asleep at work in the past. Co-

worker, Rodney Coffman confirmed the claimant had fallen asleep at work. The claimant did not assert or provide evidence that the issues related to sleeping were medical in nature. The employer in response offered to modify the claimant's schedule to allow him to get more sleep and the claimant declined.

On July 17, 2019, the claimant's manager, Jessica Ayala, observed the claimant in his work space, with his head down and eyes closed. She reported to her manager that it appeared he was sleeping and it was verified that he was not actively on the phone system as scheduled. The claimant denied being asleep on the job and wrote that he was not asleep on the termination form. He stated he was quietly helping provide technical support to a co-worker and opined he was discharged in retaliation for failure to falsify employer records as requested.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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). In this case, the claimant was previously warned two weeks prior to the final incident for sleeping on the job before the final incident occurred on July 17, 2019. Based on the evidence presented, the administrative law judge is not persuaded the claimant was discharged in retaliation for not falsifying documents as asserted by him. Nor is the administrative law judge persuaded that writing he was not asleep on the job negates Ms. Ayala's credible observation of him sleeping on July 17, 2019 by way of his head down and eyes closed. Rather, the administrative law judge is persuaded that more likely than not, the claimant was sleeping on July 17, 2019, which led to his discharge. The employer has met its burden of proof that the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The August 5, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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