

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGER P MILLER**  
Claimant

**APPEAL NO. 07A-UI-10558-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACH FOOD CO INC**  
Employer

**OC: 10/14/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 5, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. William Nelson participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a material handler from July 5, 1996, to October 10, 2007. The claimant was informed and understood that under the employer's work rules, employees were prohibited from loafing, loitering, and being inattentive to their duties. As of June 25, 2007, the claimant was at the last stage of the employer's progressive discipline policy after receiving a suspension for failing to properly issue product. The claimant was informed that his job was in jeopardy for any additional violations.

On October 10, 2007, the claimant decided to take a break and sit down to rest his back. He found a cubbyhole area created by stacked pallets where he could sit unobserved. The claimant's supervisor was looking for the claimant. He found the claimant in the cubbyhole area and noticed that the claimant was sitting with his head down. The claimant was asleep at that time. The supervisor left to find a witness, and when he returned, the claimant was coming out of the area where he had been sitting. The claimant was in the cubbyhole area for approximately 15 minutes. He was not entitled to a break at that time.

On October 10, 2007, the employer discharged the claimant for violating its work rule prohibiting loafing or loitering because of his sleeping on the job and taking an unauthorized break.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant admitted to taking an unauthorized break but denied sleeping on the job. He testified, however, that he had not realized how long he had been sitting, which is an obvious sign that he dozed off. His violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 5, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw