

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY D VANCE**  
Claimant

**APPEAL NO. 15A-UI-08223-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NESTLE PURINA PETCARE COMPANY**  
Employer

**OC: 06/14/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Timothy Vance (claimant) appealed a representative's July 15, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Nestle Purina Petcare Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 21, 2015. The claimant participated personally. The employer notified the administrative law judge prior to the hearing that it did not wish to participate in the hearing and, therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 28, 2009, as a full-time grill operator working 3:00 p.m. to 11:30 p.m. The claimant received the union contract and signed for receipt of the employer's handbook. The employer's policies do not allow sleeping on the job. The employer did not issue the claimant any warnings during his employment.

The claimant worked at a monitor in a warm environment. On June 22, 2015, his computer monitor said the room temperature was 112 degrees. Tubes carrying product heated to 200 degrees or 260 degrees was twelve to fifteen feet from the claimant and the air was moist. The claimant had repeatedly asked for air conditioning and fresh air ventilation but was denied. The conditions made the claimant sleepy at work.

On June 24, 2015, the claimant was called in to work at 2:00 p.m. for a meeting in an air conditioned room. After the meeting he went to work and his room temperature was 98 degrees. At approximately 5:00 p.m. the claimant dozed off for a minute or less due to the working conditions. The employer placed the claimant on a three-day suspension. On June 29, 2015, the employer terminated the claimant for falling asleep at work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986).

In this case the working conditions provided by the employer were not conducive to staying awake. The claimant repeatedly asked to work in an area that did not reach over 100 degrees and had fresh air. In addition, the employer had not previously warned the claimant about any of the issues leading to the separation. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's July 15, 2015, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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