IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-03305-H2T
OC 02-22-04   R 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319**.

WESLEY PIERSON
3408 MISSISSIPPI AVE
DAVENPORT IA 52807

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

ILLINOIS ARMORED CAR CORPORATION
ATTN – HUMAN RESOURCES
2001 W CERMAC RD
BROAD VIEW IL 60153

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2004. The claimant did participate. The employer did participate through Gregory Zupancich, Director of Security and Investigations.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an armored transport personnel part time beginning September 12, 2002 through February 26, 2004 when he was discharged. On February 11, 2004 the claimant and his partner were subjected to routine surveillance as part of the employer's regular job

evaluation. Mr. Zupancich observed the claimant on two occasions sitting behind the wheel of the armored vehicle while it was at two different stops, with his eyes closed and his head down on his chest. On one of those occasions, while the claimant was parked outside the Target store in Clinton, Mr. Zupancich stood at the driver's side window, with his face and nose pressed up against the glass for four to five minutes watching the claimant sleep. The claimant never noticed Mr. Zupancich until he knocked on the window to get the driver's attention. The claimant was given work rules at the beginning of his employment that specifically stated that any employee caught sleeping on the job would be terminated. During the time that the claimant was observed sleeping, his partner was inside the stores where the stops were made.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Sleeping on the job on two occasions, one year apart can constitute job misconduct. Hurtado v. IDJS, 393 N.W.2d 309 (Iowa 1986).

The claimant was observed on February 11, 2004 by Mr. Zupancich to be sleeping on the job. The claimant did not even notice when Mr. Zupancich was standing outside the door of his truck for four minutes. The greater weight of the evidence convinces the administrative law judge that the claimant was in fact sleeping on the job on February 11, 2004. Sleeping on the job is misconduct sufficient to disqualify the claimant from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The March 18, 2004, reference 01, 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.

tkh/s