

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E HART
Claimant

APPEAL NO: 10A-UI-01774-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

**OC: 01/10/10
Claimant: Appellant (2)**

Section 96.5.2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's February 2, 2010 decision (reference 01) that disqualified him from receiving benefits, and the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on April 1, 2010. The claimant participated in the hearing. Bryce Albrechtsen, the human resource manager, and Kurt Schnippel, a production supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 1988. The claimant worked as a full-time production operator on rotating shifts and swing shifts. The employer's policy informed employees they are not allowed to sleep while on duty.

On February 16, 2009, the claimant received a written warning after the employer found him sleeping at work that day. In addition to receiving a written warning, the claimant also received a two-day unpaid suspension. The employer warned the claimant that if he were found sleeping at work again, he could be discharged.

After the claimant received the written warning, he went to his physician. The claimant learned he had sleep apnea. The claimant told his supervisor about the medical diagnosis.

On January 9, 2010, the claimant worked an overnight shift. Work was slow and the claimant went to the break room. While in the break room, the claimant fell asleep. The claimant's supervisor saw the claimant sleeping in the break room at 1:15 a.m. The supervisor did not say anything to the claimant until 1:45 a.m. The claimant's supervisor then woke up the claimant and asked him to return to work. The claimant did not realize there were any problems with his employment until Tuesday, January 12.

On January 12, 2010, several hours after the claimant reported to work, the employer told him he was discharged for what had happened on January 9, 2010, sleeping in the break room. Since the employer pays employees while they are on a break, the employer interprets its policy to mean an employee is not allowed to sleep while on break. When an employee takes more than a 30-minute break, which is time allowed for a break, Schnippel does not give an employee a warning for taking a long break.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant violated the employer's policy about sleeping at work on January 9, 2010 and a year earlier. The employer established justifiable business reasons for discharging the claimant. Even though the claimant violated the employer's rule, the facts do not establish that he intended to fall asleep at work or intentionally violated the employer's policy.

On January 9, work was slow so the claimant went to the break room for a break. The first time the employer documented any problem with the claimant sleeping at work was February 16, 2009. After the claimant received this warning, he took reasonable steps and went to his physician. He learned he had sleep apnea. There were no problems until the morning of January 9, 2010, almost a year later.

Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. As of January 10, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's February 2, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, intentionally violate the employer's rules. He did not commit work-connected misconduct. As of January 10, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs