

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL KOELE**  
Claimant

**APPEAL NO: 10A-UI-00197-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEADOWVALE DAIRY LLC**  
Employer

**OC: 12-06-09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 10, 2010. The claimant participated in the hearing with witness/former driver Jeremy Joffer and Attorney Scott Bixenman. Jason Russ, Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time milk hauler for Meadowvale Dairy from March 29, 2009 to December 3, 2009. The employer has to be very careful about cleanliness because they deal with food grade products and are subject to inspections at least once a month. One of the milk receivers called the employer December 3, 2009, and said he was “fed up” with the claimant and was not going to wake him up anymore when he was being unloaded. The usual procedure is for the driver to go to the receiver where the receiver unloads the truck, which takes about 30 minutes, and then the driver is supposed to scrub down the outside of the truck on the last run of the day. The claimant had been sleeping while the receiver unloaded him and he should have been hooking up the hoses and then unhooking them after the milk was unloaded. The receivers start the wash system after the claimant unhooks the hose and then the claimant was supposed to scrub down the outside of the truck but the claimant would go back to his truck and sleep instead of doing any of the above. When the receivers were done they would unhook the claimant’s hose, knock on his window to wake him up, and then he would leave without washing the truck because there were usually other drivers waiting to unload and he could not wash the truck at that point which was why he was supposed to do it earlier. The receiver told the employer if one of his employees was acting like that he would want to know so he wanted to let the employer know what the claimant was doing. He said he had to wake the claimant up three times in the last week and he was not going to wake him up December 3, 2009. The claimant was there an additional 45 minutes sleeping in the truck and the receiver told the employer he

could wake him up. The employer called the claimant two or three times before the claimant answered because he was talking to his girlfriend on the phone. The employer asked him what he was doing and the claimant denied that he was sleeping. The employer called the receiver and the receiver said the claimant was awake and pulling out. When a driver sleeps he can hold up the line behind him causing others to have to work longer hours, and the employer pays him to drive, not sleep. Around the end of November 2009, another receiver told the employer he was going to reject the next load of milk delivered by the claimant unless the claimant scrubbed and disinfected the rubber gasket on the manhole cover because there was old, rotten, cheesy milk on it. The receiver told the employer the claimant was not cleaning his truck like everyone else was. Approximately one month before the claimant's separation from employment the employer heard from several receivers and milk haulers that the claimant was telling "everyone" that he was doing everything in his power to get fired and stay home so he could collect unemployment insurance benefits during the cold weather months. The employer issued several verbal warnings about cleaning the trucks and the outside of the chiller as well as the gaskets and other pieces that needed to be cleaned everyday but did not warn the claimant about sleeping prior to the termination because he was not aware the claimant was sleeping while at work. The claimant denied sleeping in the truck December 3, 2009, but stated he was talking to his girlfriend on the phone and did not have a chance to click over and pick up the employer's calls. He admitted it was his responsibility to unhook the hoses and clean the outside of the truck but he often just rinsed it off without scrubbing everything down because the weather frequently made the roads sloppy. The employer testified he washed and scrubbed the truck in every kind of weather and could do it in 15 minutes. The drivers were supposed to go around the "sloppy roads" or go through the short distance of gravel at about five miles per hour so as not to get the trucks dirty again. The claimant testified he only slept in his truck three times: once when he was ill in November 2009 and two other times after he had worked approximately 20 hours in November and December 2009. Jeremy Joffer, a former part-time driver for the employer testified it was not uncommon to see the claimant and other company's drivers sleeping if outside the receiving area for two to three hours but the claimant stated he never had to wait more than 45 minutes when he drove. Mr. Joffer stated the drivers were required to hook and unhook the hoses themselves. He indicated that every day after the trucks were unloaded the drivers were supposed to wash the outside of their trailer and he did so unless it was raining or the truck was already clean. The employer stated drivers were expected to scrub down the trucks everyday because the tanks were stainless steel and if they were not cleaned often or correctly they would have to be acid washed and the employer paid the drivers to wash the trucks and it was the employer's decision that the trucks should be washed everyday rather than when the drivers decided to do it. After the call from the receiver December 3, 2009, the employer terminated the claimant's employment.

#### **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.

While the claimant stated he only slept on the job three times and those times were twice in November and once in December 2009 after he had either driven for several hours or on one occasion when he was ill, Mr. Joffer said it was not uncommon to see the claimant and other drivers sleeping outside the gate in their trucks and the claimant stated he never had to wait more than 45 minutes and did not sleep while waiting. The claimant agreed it was not fair to the employer to sleep in the truck when he was being paid by the employer. Additionally, although the claimant denied he was sleeping December 3, 2009, or had been sleeping at least three times prior to that, it seems unlikely the receiver would call the employer and tell him the claimant had been sleeping and he would want to know if he had an employee like that if it were not true. The receiver also said he was tired of waking the claimant up as he or his employees had done it three times in the last week and were not going to do it any longer. When the employer tried to call the claimant he did not answer the two or three times he called but soon afterward he called the employer back and said he was talking to his girlfriend. Either he was sleeping and did not answer the phone or he was talking to his girlfriend and chose to ignore his manager's telephone calls. Regardless of which one he did, it was not appropriate behavior for an employee toward his manager. When drivers slept it held up the line and was not fair to other drivers or the receiver's employees because it costs them additional time and they should not be expected to get out of their trucks to go wake the claimant before returning to their trucks. The claimant's practice cost other drivers and receivers in time and money. The employer's testimony about the phone call from the receiver stating the claimant had been sleeping when he should have been cleaning and they had to wake him up was credible. Another receiver called the employer around the same time and told him he would reject the next load of milk the claimant brought unless the claimant scrubbed and disinfected the rubber gasket on the manhole cover because there was old, rotten, cheesy milk on it. The receiver also told the employer the claimant was not cleaning the truck like everyone else did. Beside simple sanitation the milk and cheese was obviously a food grade product and faced monthly or more frequent inspections which could have resulted in large fines for the employer for unclean trucks. That testimony was credible as well. Under the circumstances, the administrative law

judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

**DECISION:**

The December 29, 2009, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs