

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY P SHOGREN
Claimant

APPEAL NO. 14A-UI-03200-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 02/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 17, 2014, reference 01, which disqualified the claimant from receiving unemployment insurance benefits finding that the claimant was discharged for sleeping on the job. After due notice was provided, a telephone hearing was held on April 16, 2014. Claimant participated. The employer participated by Ms. Danielle Williams, Human Resource Coordinator.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Rodney Shogren was employed by TPI Iowa, LLC from July 17, 2013 until February 17, 2014 when he was discharged for sleeping on the job. Mr. Shogren was employed as a full-time production worker working 5:00 p.m. until 5:00 a.m., three days per week and working alternating Saturdays. Mr. Shogren was paid by the hour. His immediate supervisors were Scott Parker and Kyle Davis.

Mr. Shogren was discharged on February 17, 2014 after he was observed to be in a sleeping state on the night of February 14, 2014. On that date, the claimant was observed by John Ward, a manager, standing upright at his workstation with tools in his hands, but asleep. When questioned, Mr. Shogren admitted that he had fallen asleep, but stated that it was not intentional. Under company policy employees who are found sleeping on the job are subject to termination. Prior to the incident in question, Mr. Shogren had not been warned or counseled for similar behavior.

On the night in question, Mr. Shogren felt "groggy" after eating his lunch with other workers, but believed that the grogginess was temporary and that he would be able to perform his duties as he had on other occasions. Because of the incident, the claimant requested at the time to be

drug tested believing that his grogginess may have been caused by an external source that was unknown to the claimant. The employer declined Mr. Shogren's request.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of this claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 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). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial" and in most cases must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

An employer may discharge an employee for any number of reasons, or for no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand the evidence establishes that Mr. Shogren had not been intentionally dozing off or sleeping on the job. The claimant had not sat down or laid down or attempted to conceal his activities when observed by a management worker in what appeared to be a sleep-like state while standing at his workstation holding work tools. Although the claimant testified that he felt "groggy" after consuming his lunch, the claimant did not punch out and because he thought he would soon shake the grogginess off and would be able to continue working as he had done often in the past. The administrative law judge notes that the claimant had not been warned or counseled for similar conduct in the past and that when questioned by his employer the claimant readily admitted that he had inadvertently fallen asleep while standing up attempting to perform his work.

The question before the administrative law judge in this case is not whether the employer has a right to discharge Mr. Shogren for this reason, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 17, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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