

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM MARTIN JR
Claimant

APPEAL NO: 11A-UI-03240-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 01-23-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 4, 2011, 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 April 5, 2011. The claimant participated in the hearing. Deborah Purdue, Branch Manager and Jennifer Starr, Account Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

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 general laborer for Temp Associates from October 15, 2009 to December 30, 2010. He was assigned to work at McKay Mitchell as a full-time bander operator from July 15 to November 2, 2010. That assignment ended because the claimant sat rather than stood at his machine and fell asleep at his machine (Employer's Exhibit One). He was next assigned to work at Nypro Knaak as a full-time machine operator from November 15 to December 2, 2010. That assignment ended because he fell asleep at a safety meeting (Employer's Exhibit Two). He was then assigned to work at West Liberty Foods as a full-time housekeeper from December 21 to December 30, 2010. That assignment ended at the request of the client because after trying him in various positions he was not a "good fit" as the client found him to be "VERY slow" and required the help of another employee to do a job the client felt could be done by one person and much faster (Employer's Exhibit Three). The client wrote down what needed to be done but the claimant still did not do the job to the client's expectations (Employer's Exhibit Three). After three failed assignments, two of which ended because the claimant was sleeping on the job, 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 § 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 claimant was dismissed from two assignments because he was sleeping on the job and was dismissed from the last assignment because he worked very slowly and required help on a job that should have required one person to perform. Because of his actions the employer could no longer send him on further assignments in good conscience. Consequently, 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 are denied.

DECISION:

The March 4, 2011, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs