

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYA HANCOCK**  
Claimant

**APPEAL NO: 13A-UI-13145-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINEGARD COMPANY**  
Employer

**OC: 10/27/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 19, 2013, 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 December 18, 2013. The claimant participated in the hearing. Kerry Hale, Human Resources 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 mold room machine operator for Winegard Company from May 9, 2011 to October 30, 2013. She worked the 4:00 p.m. to 2:00 a.m. shift and was discharged for sleeping on the job.

The second shift supervisor reported seeing the claimant sleeping on a pile of cardboard boxes with something under her head being used as a pillow sometime after her midnight break. He attempted to wake her several times before she stirred and sat up. The claimant was feeling ill and admitted she lay down because she was nauseous and agrees it is possible she fell asleep.

She did not call in that night to report she was ill and did not ask to go home because she thought she had four attendance points out of a possible five in a rolling calendar year before termination would occur. She also could not afford the \$30.00 co-pay to see her physician at that time. The claimant actually had three attendance points and would not have pointed out had she either called in to inform the employer she was ill or went home early for that reason. The employer's policy states that sleeping on the job results in automatic termination. The claimant had not received any previous warnings for anything but possibly attendance during her tenure with the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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).

While the claimant did fall asleep during her shift October 28, 2013, she was not feeling well and believed if she called in she would point out under the employer's attendance policy. Sleeping on the job is misconduct and the fact that the claimant was a machine operator makes the situation a safety issue. That said, this was an isolated incident of misconduct and the claimant had not received any previous warnings. Although not condoning the claimant's behavior, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The November 19, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs