

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL R KEMNITZ
Claimant

PRESTAGE FOODS OF IOWA LLC
Employer

APPEAL 24A-UI-04447-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/14/24
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Daniel R. Kemnitz, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) May 2, 2024 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Kemnitz REGULAR (state) UI benefits because IWD concluded the employer discharged him from employment on April 18, 2024 for sleeping on the job. On May 9, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to M. Kemnitz and the employer for a telephone hearing scheduled for May 22, 2024.

The administrative law judge held a telephone hearing on May 22, 2024. Mr. Kemnitz participated in the hearing personally. The employer participated in the hearing through Jordan Miller, people manager and Debbie Evans, janitor. The administrative law judge admitted Department's Exhibit 1 as evidence.

The administrative law judge concludes Mr. Kemnitz is eligible for UI benefits because the employer has not established that it ended his employment for disqualifying, job-related misconduct.

ISSUE:

Did the employer discharge Mr. Kemnitz from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The decision in this case rests, in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.² The administrative law judge may believe all, part or none of any witness's testimony.³ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

² *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

³ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

experience.⁴ In determining the facts, and deciding what testimony to believe, the administrative law judge may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.⁵

The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his own common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Kemnitz began working for the employer as a full-time maintenance tech. His employment ended on April 18, 2024.

On Sunday, April 14, work was slow, so Mr. Kemnitz went into an unlocked training room to study for a work exam. The employer allows employees time to study during slower work time. Mr. Kemnitz told his co-workers that he was going to study. Mr. Kemnitz studied for about two hours. Mr. Kemnitz had his work radio with him during this time. Mr. Kemnitz's supervisor called him on the radio several times, but he did not receive any calls. Mr. Kemnitz returned to his regular job duties after about two hours of studying.

Later in his shift, Mr. Kemnitz went back to the unlocked training room for his break. The employer does not have rules about where employees are to take their breaks. Mr. Kemnitz was in the room for about 15 minutes, and he fell asleep. The room has timed lighting, so the lights went off after about five minutes. About 15 minutes after Mr. Kemnitz went into the room for his break, Ms. Evans entered the room to clean. When Ms. Evans entered the room, the lights automatically turned on and she was startled to see Mr. Kemnitz in the room. Mr. Kemnitz left the room and returned to work. Ms. Evans reported the incident to her supervisor.

Around the same time, Mr. Kemnitz's supervisor reported that they could not locate Mr. Kemnitz for about 2 hours on April 14. The employer reviewed its video footage and saw Mr. Kemnitz entering the training room on April 14 and leaving after being in the room for about two hours. The employer also saw Mr. Kemnitz enter the training room for a second time on April 14 and leave after about 15 minutes. Mr. Miller spoke with Mr. Kemnitz and Mr. Kemnitz admitted to sleeping while he was in the room the second time.

The employer concluded that Mr. Kemnitz was sleeping on the job. On April 18, Mr. Miller called Mr. Kemnitz and told him that his employment was over. Mr. Miller did not give Mr. Kemnitz a reason for terminating his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Kemnitz from employment on April 18, 2024 for a reason that does not disqualify him from receiving UI benefits.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

⁴ *Id.*

⁵ *Id.*

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.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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.

The employer has the burden of proof in establishing disqualifying job misconduct.⁶ The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.⁷ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁸

In an at-will employment environment an employer may discharge an employee for any number of reasons or 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation of the employer's policy or rule is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Sleeping on the job can be disqualifying misconduct. An employer can reasonably expect that an employee will be working when scheduled. But the analysis in this type of case focuses on the voluntariness of the employee's conduct. For example, a person who nods off at work after taking a cold pill likely has not committed an act of misconduct. But a person who has made some effort to try to hide their sleeping from the employer likely has committed an act of misconduct.

In this case, the employer has not established misconduct on the part of Mr. Kemnitz. Mr. Kemnitz studied for about 2 hours on April 14. The employer allows employees to study during slow work times and Mr. Kemnitz took advantage of this opportunity. This is not misconduct. Later in his shift, Mr. Kemnitz took a break and fell asleep during this break. This is also not misconduct. Since the employer has not established disqualifying, job-related misconduct on the part of Mr. Kemnitz, he is eligible for UI benefits.

⁶ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁷ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁸ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

DECISION:

The May 2, 2024 (reference 01) UI decision is REVERSED. The employer discharged Mr. Kemnitz from employment on April 18, 2024 for a reason that does not disqualify him from receiving UI benefits. Mr. Kemnitz is eligible for REGULAR (state) UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

May 23, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines IA 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines IA 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.