

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RODNEY L COBBS
320 GLENWOOD ST
WATERLOO IA 50703-4060

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 06A-UI-06507-CT
OC: 01/15/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rodney Cobbs filed an appeal from a representative's decision dated June 22, 2006, reference 04, which denied benefits based on his separation from Express Services, Inc. (Express). After due notice was issued, a hearing was held by telephone on July 13, 2006. Mr. Cobbs participated personally. The employer participated by Lisa Franzmeier, Staffing Consultant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cobbs was employed by Express beginning in

October of 2005. On May 7, 2006, he began a full-time assignment with Newcor Blackhawk Engineering (Newcor). He worked from 11:00 p.m. on one day until 7:00 a.m. the following day. He was discharged for sleeping on the job.

On May 23, Mr. Cobbs went to sleep during his lunch break. He acknowledged that it was his intent to sleep during his break. Because he did not wake up in time, he was 15 minutes late returning from break. Newcor had complaints of Mr. Cobbs sleeping on the job on two prior occasions, but were unable to verify that he was sleeping. As a result of his sleeping on May 23, Newcor requested that he be removed from the assignment. Express subsequently discharged him on May 24, 2006 and will not offer him further work.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cobbs was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Cobbs was discharged for sleeping on the job. Although he was on break when he went to sleep, he was still sleeping when he should have returned to work. Sleeping during work time constitutes a substantial disregard of the standards an employer has the right to expect.

Mr. Cobbs had not received any warning that his job was in jeopardy. He denied the prior allegations that he was sleeping on the job. Whether he was or was not, the fact that the employer raised the issue at all should have been sufficient to put him on notice that sleeping when he should have been working might lead to his discharge. For the reasons cited herein, it is concluded that the employer has satisfied its burden of proof in this matter. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 22, 2006, reference 04, is hereby affirmed. Mr. Cobbs was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/cs