

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE C HAMPTON

Claimant

GKN ARMSTRONG WHEELS INC

Employer

APPEAL NO: 13A-UI-00932-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/12

Claimant: Appellant (2)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 17, 2013, reference 02, that held she was discharged for sleeping on the job on January 4, 2013, and benefits are denied. A telephone hearing was held on February 25, 2013. The claimant, and Attorney Stuart Higgins, participated. The employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began work for the employer thru a temporary agency and after about two months became a full-time employee on July 16, 2012. She worked primarily as a forklift operator with some other work duties.

Claimant advised the employer about her pregnancy on June 28. She later had some issues with paint fumes and welding fumes, so the employer moved her about given doctor imposed work restrictions due to the pregnancy. On or about December 11 the employer told claimant it would it have to terminate her or they could reach a mutual agreement to part ways. Claimant understood the mutual separation as a lay-off and agreed to it. The employer did not protest her unemployment claim at that time.

The employer contacted claimant to return to work and she did so on January 4. The claimant informed the employer she had some more restrictive work restrictions and it put her in a tool crib to sit on a chair with no work to do. The employer discharged claimant the following Monday for sleeping on the job. Claimant admits she was resting with no work to do, and notes that she had reported employees in the past for the same conduct without any termination result.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 4, 2013.

The employer did not participate in this hearing and offer evidence of the claimant sleeping on the job. Generally, a single incident of sleeping on the job does not constitute job disqualifying misconduct. Hurtado v. IDJS, 393 NW2d 309 (Iowa 1986).

DECISION:

The department decision dated January 17, 2013, reference 02, is reversed. The claimant was not discharged for misconduct on January 4, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs