

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL LANGE
Claimant

APPEAL NO: 06A-UI-08873-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

**OC: 08-06-06 R: 04
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 20, 2006. The claimant participated in the hearing. Scott Buse, Store Manager, and Cindy Burdt, Director of Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibit A 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 sales associate for Theisens Inc. from October 26, 2004 to August 8, 2006. On February 20, 2006, the claimant fell asleep at the farm counter in the customer service area. The employer issued a written warning to the claimant about sleeping on the job and told him he would be suspended and receive a second written warning if it happened again (Employer's Exhibit One). The employer also asked the claimant if he had a medical condition that would cause him to fall asleep or if he needed any accommodations, and the claimant said no. On May 26, 2006, the assistant manager found the claimant sleeping in an aisle and observed that he woke up after an announcement was made over the employer's speaker system. The employer warned the claimant and suspended him for the remainder of the day and half of the following day (Employer's Exhibit One). The employer again asked the claimant if he had a medical condition that needed accommodation and the claimant said no; and the employer told him if he was caught sleeping on the job again, he would be termed. On August 7, 2006, the employer discovered the claimant sleeping at the farm counter and his computer had gone to screen saver. He woke up when another employee made a noise. The claimant denies sleeping on the job but testified he was diagnosed with sleep apnea in June 2006 (Claimant's Exhibit A) but did not report the problem to the employer because he

was under the mistaken belief that he could not disclose his medical condition to a third party under HIPPA laws.

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 had sleep apnea, he failed to provide that information to the employer despite repeated requests by the employer to notify it if he had a medical condition or needed accommodations. If he had done so, he might have prevented his termination. That said, however, because the claimant did have a documented medical condition, the administrative law judge cannot conclude that his sleeping on the job was intentional and consequently cannot find that the claimant's actions rise

to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The August 29, 2006, reference 02, decision is affirmed. 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/kjw