

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

GALEN G DAVIS
PO BOX 2115
ANTHONY IA 50239

SWIFT & CO
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-05045-DWT
OC: 04/10/05 R: 02
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Galen G. Davis (claimant) appealed a representative's May 2, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Swift & Company (employer) would not be charged because the claimant had been discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2005. The claimant participated in the hearing. When the employer was contacted for the hearing, the employer informed the administrative law judge that the employer decided it would not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant commit work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 26, 2004. The claimant worked as a full-time mechanic on the night shift. Prior to April 14, 2005, the claimant's job was not in jeopardy.

During the last month of his employment, the claimant and other night-shift mechanics frequently worked 12-hour shifts instead of eight-hour shifts because the employer did not have enough first-shift mechanics working. This meant that instead of getting off at 7:30 a.m., the claimant would not get off work until 11:30 a.m. When the claimant worked his normal shift, he would get home by 8:00 a.m. and sleep until noon. He then slept right before he went to work at 11:00 p.m. When he worked 12-hour shifts, he did not get home until noon.

The morning of April 14, the claimant worked a 12-hour shift and did not get home until noon. For some reason the claimant could not get to sleep. When the claimant returned to work at 11:00 p.m. that day, he was tired. During the course of his employment, the claimant fell asleep at work. The employer received information the claimant was sleeping at work around 3:00 a.m. the morning of April 15, 2005. The employer discharged the claimant for falling asleep at work that same day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the employer may have had compelling business reasons for discharging the claimant. The claimant, however, established that he did not intentionally fall asleep at work. Instead, the incident occurred as a result of working 12-hour shifts instead of his usual 8-hour shifts. The claimant's sleep pattern was disrupted because the employer did not have enough employees to work the first shift. Also, the facts establish that prior to April 15, the claimant's job was not in jeopardy. Therefore, even though the claimant may have violated one of the employer's rules, an isolated incident under these circumstances does not

rise to the level of work-connected misconduct. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 2, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs