

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIAN N NZOMBO
Claimant

APPEAL NO. 09A-UI-03492-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**Original Claim: 02/01/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 23, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Heather Hoyt participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a telephone sales representative from December 3, 2007, to February 2, 2009. The claimant had been disciplined in September 2008 for looking at Facebook and sleeping during his work shift, and in December 2008 for using his cell phone at work.

On the afternoon of January 31, 2009, the claimant was in a training session. He was experiencing some emotional issues due to his mother's recent death, and he closed his eyes for a few seconds during the training. His supervisor saw him and told him to wake up. He immediately opened his eyes. He was not asleep.

The employer discharged him on February 2, 2009, for sleeping on the job and for his previous history of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. I believe the claimant's testimony that he was not asleep.

DECISION:

The unemployment insurance decision dated February 23, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw