Appeal Number: 05A-UI-05576-DW
OC: 05/08/05   R: 12
Claimant: Appellant (1)

JOE N LOWERY
556 – 16TH AVE
EAST MOLINE IA 61244

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.

IOC SERVICES LLC
1641 POPPS FERRY RD B1
BILOXI MS 39532 2226

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:

Joe N. Lowery (claimant) appealed a representative's May 20, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of IOC Services LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 16, 2005, in Davenport, Iowa. The claimant did not appear for the hearing. Jason True, the human resource manager, Harold Mire, the table games supervisor, and Greg Alexander, the pit manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 27, 1995. The clamant most recently worked full time as a floor supervisor. Alexander was the claimant's supervisor.

As the result of an unsatisfactory performance evaluation, the employer placed the claimant on a performance improvement plan for 60 days. The claimant signed the performance improvement plan on October 22, 2004. On December 3, 2004, the employer gave the claimant a final warning for falling asleep at work instead of performing his job – watching the employer's assets.

On February 1, 2005, the employer gave the claimant a second final warning for falling asleep at work and failing to perform his job. On April 30, 2005, the employer discovered the claimant failed to be attentive to his job responsibilities. For almost four hours the claimant failed to accurately adjust his table inventory to reflect that large purple cheques ($500.00) left the table he supervised. As a result of this problem, the claimant inaccurately reported a customer's winnings on a rating card. Alexander had been observing the same player and knew the information on the rating card was incorrect. When a floor supervisor does not pay attention and fails to focus on the game he observes, errors such as these occur. On May 1, 2005, an employee reported seeing the claimant with his eyes closed while working instead of paying attention to the game he was supervising.

On May 2, 2005, the employer suspended the claimant. On May 6, 2005, the employer discharged the claimant for repeatedly failing to perform his job satisfactorily. The employer concluded the claimant failed to focus on his job duties especially when he continually closed his eyes at work or even slept while at work.

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. 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 claimant knew or should have known his job was in jeopardy after he received the second final written warning on February 1, 2005. The claimant's repeated failure to keep his eyes open and his mind focused on the games he supervised amounts to negligence to such a degree that the claimant committed work-connected misconduct. Therefore, as of May 8, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 20, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 8, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/tjc