

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL P CASHATT**  
Claimant

**APPEAL NO: 11A-UI-01900-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PEPSI-COLA GENERAL BOTTLERS INC**  
Employer

**OC: 06/06/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 10, 2011 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Connie Hickerson represented the employer. Dave Bramov, the plant manager, testified on the employer's behalf. Scott Klahsen was available to testify, but did not. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2001. He worked as a full-time machine operator. In 2006 the claimant discovered he had sleep apnea. The claimant told his supervisor, J.E. about his sleep disorder. As a result of learning he had a sleep disorder; the claimant applied for FMLA and received FMLA which covered a July 19, 2006 absence.

When the claimant started caring for his mother in March 2010, he again requested FMLA. The claimant was not granted FMLA until after November 18, 2010. On November 17, the claimant was taking care of his mother. It was long day and he was tired when he reported to work. If the claimant had received FMLA approval, he would have stayed home to catch up on his sleep. Instead, the claimant went to work because he thought he would be able to stay awake and do his job. After watching parts go by for three hours, the claimant dozed off while on the clock. On November 18 around 4:00 a.m., the claimant's supervisor saw him and observed him sleeping for more than four minutes. The claimant's job did not present any safety concerns even if the claimant was sleeping. When his supervisor walked up to him, the claimant heard him and woke up.

When the claimant talked to Bramov, he explained that his supervisor knew he had a sleep disorder and he was tired when he reported to work because he had been taking care of his

mother during the day. On November 24, when the employer discharged him, the claimant gave Bramov a doctor's statement that verified the claimant had sleep apnea and had recently been prescribed medication to keep him awake. Shortly after November 18, the claimant went to his physician and learned his sleep apnea condition had gotten worse. It was then his physician prescribed medication.

#### **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 employer established justifiable business reasons for discharging the claimant. He violated the employer's policy about sleeping at work. In accordance with the employer's written policy, the employer discharged the claimant. The evidence also shows that the claimant has had a known sleep disorder since mid-2006. The claimant informed his supervisor about his sleep disorder in 2006. The claimant kept his sleep disorder under control and did not have any problems until the morning of November 18, 2010. After taking care of his mother all day, the claimant reported to work tired. His job required him to watch parts passing by. After doing this for three hours, the claimant's inadvertently fell asleep. The facts do not establish that he intentionally fell asleep. Instead, a combination of factors: taking care of his mother, a non-stimulating job, and not knowing his sleep disorder had gotten worse, resulted in the claimant dozing off while at his work station. This was the first time this had happened to the claimant and his job was not in jeopardy prior to this incident. The employer did not establish that the claimant intentionally disregarded the employer's interests. The claimant did not commit work-connected misconduct. As of November 21, 2010, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's February 10, 2011 determination (reference 03) is reversed. The claimant violated the employer's policy about sleeping at work, but he did not intentionally disregard the employer's interests. A combination of factors led to the claimant's inadvertent dozing at work.

The claimant did not commit work-connected misconduct. As of November 21, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css