

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A WILSON
Claimant

APPEAL NO. 16A-UI-07586-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAWN MANUFACTURING INC
Employer

OC: 06/12/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Wilson (claimant) appealed a representative's June 28, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Fawn Manufacturing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 29, 2016. The claimant participated personally. The employer participated by Mark Donhue, Plant Director, and Brian Peavey, Welding Manager. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 10, 2012, as a full-time paint line stock handler. The claimant received the employer's Plant Rules and Regulations. On April 22, 2016, the employer issued the claimant a written warning for sleeping at work. He was suspended for three days. On April 26, 2016, the claimant returned to work and signed a Last and Final Chance Agreement. The employer notified the claimant that further incidents of sleeping on the job would result in termination from employment. On May 17, 2016, the claimant was found sleeping at work. The employer terminated the claimant on May 17, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by sleeping on the job after being warned. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 28, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs