

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILL JOSEPH
Claimant

C&W FACILITY SERVICES INC
Employer

APPEAL 17A-UI-00247-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 5, 2017, (reference 02) unemployment insurance decision that denied benefits based upon his discharge for sleeping on the job. The parties were properly notified of the hearing. A telephone hearing was held on January 30, 2017. The claimant Will Joseph participated and testified. The employer C&W Facility Services Inc. participated through Personnel Coordinator Cindy Paris and Account Manager Byron Kingsbury.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a grounds maintenance technician from January 13, 2014, until this employment ended on December 7, 2016, when he was discharged.

On November 30, 2016, an outside contractor reported to the employer that claimant was sleeping in his vehicle on the job. The contractor told the employer that claimant was in his truck, which was blocking the alley way so the contractor could not get through. The contractor tried shining his lights into claimant's vehicle and, when that did not work, tried knocking on the window. Claimant still did not wake up, so the contractor contacted another employee of the employer. This employee came and opened the door to claimant's vehicle in order to wake him up. Claimant's vehicle was running this entire time.

The employer has a policy in place which provides that sleeping on the job is terminable as a first offense. This policy is located in the employee handbook, which claimant received a copy of, but did not read. According to the employer the claimant had received a previous verbal warning about sleeping on the job in September 2016. Kingsbury testified he spoke to claimant about this issue in September after learning about an incident where he fell asleep while at work back in August. Kingsbury testified he warned claimant at that time that this was a terminable

offense. Claimant denied this conversation occurred or that he had ever fallen asleep while at work before November 30.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions

constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant fell asleep while at work, even after having been warned that this was a terminable offense; though it is entirely possible that claimant does not recall this conversation. Despite these warnings, claimant again engaged in similar behavior. This is disqualifying misconduct.

Even if this were the first incident of claimant falling asleep while at work, the fact that he did so behind the wheel of a running vehicle is particularly troubling. The employer is responsible for ensuring employees operate their work vehicles in a manner that is safe for themselves, other employees, and members of the general public. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer when he fell asleep behind the wheel of a running vehicle. This is misconduct even without prior warning or specific policy violation.

DECISION:

The January 5, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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