

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHADLO
Claimant

APPEAL NO. 09A-UI-15746-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**Original Claim: 08/23/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 14, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 23, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Joyce Kain participated in the hearing on behalf of the employer with witnesses Mike Williams and Rick Deerborn.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a tire builder from May 22, 1988, to May 13, 2009. He was informed and understood that under the employer's work rules, he could be discharged for sleeping on the job.

On May 13, 2009, the claimant was performing some cleanup work on some machines. He suffers from asthma and rested on a machine to catch his breath. While he was sitting with his head in his hands, a supervisor saw him and believed he was sleeping. He went to get another supervisor, who also believed the claimant was asleep. The claimant jumped up when he saw a supervisor and union steward approaching him. The claimant was not sleeping.

The claimant was allowed to go back to work but was sent home early. He was discharged on May 15, 2009, for sleeping on the job.

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 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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. This case all comes down to whether I believe the claimant that he was not asleep. I believe the claimant was taking a break due to being short of breath. He had his face in his hands and was wearing a hat. I think the supervisors believed he was sleeping, but they were mistaken. The claimant's reaction when he saw the supervisor and union steward was due to his taking an unauthorized break, not waking up from being asleep. I do not believe this one unauthorized break to rest up and catch his breath amounts to work-connected misconduct.

DECISION:

The unemployment insurance decision dated October 14, 2009, reference 01, is affirmed. 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