

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LLOYD E HUMMEL**  
Claimant

**APPEAL NO. 17A-UI-11362-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCHER-DANIELS-MIDLAND CO**  
Employer

**OC: 10/15/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Lloyd Hummel filed a timely appeal from the October 31, 2017, reference 01, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Hummel was discharged on October 16, 2017 for sleeping on the job. After due notice was issued, a hearing was held on November 28, 2017. Mr. Hummel participated. Lonnie Jacobson represented the employer. Exhibit 1 was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Lloyd Hummel was employed by Archer Daniels-Midland Company as a full-time railcar repairman from 2005 until October 16, 2017, when Dean Petroff, Plant Manager, discharged him from the employment for sleeping on the job. Lonnie Jacobson, Environmental Safety and Health Coordinator, was Mr. Hummel's immediate supervisor throughout the employment. Mr. Hummel's work hours were 6:00 a.m. to 3:30 p.m., Monday through Thursday, and 6:00 a.m. to 2:30 or 3:30 p.m. on Friday.

The employer has written work and safety rules that the employer provided to Mr. Hummel on an annual basis. The employer had Mr. Hummel sign his acknowledgement of the written work and safety rules as part of that annual distribution of the work rules. The employer most recently provided Mr. Hummel with a copy of the rules in January 2017. The rules divide workplace violations into two categories. The first category lists violations that may result in termination for the first offense. Included in that list of violations is the following: "Intentionally sleeping on the job or creating or seeking an area with the intent to sleep on the job." A second category lists violations that "will result in disciplinary action up to and including termination."

The final incident that triggered the discharge occurred on October 16, 2017. On that day, Mr. Hummel and a coworker, Charles Peterson, were assigned to inspect railcars at an ADM facility in Cedar Rapids. The railcars needed to be inspected before they were loaded. Mr. Hummel had been with the company longer than Mr. Peterson. Mr. Hummel and Mr. Peterson arrived at the jobsite sometime between 6:30 and 6:45 a.m. On the night before, Mr. Hummel had gone to bed at his usual time, 10:00 to 10:30 p.m. That morning, Mr. Hummel had awakened at his usual time, 4:30 to 4:45 a.m. At 7:35 a.m., Mr. Jacobson arrived at the jobsite where Mr. Hummel and Mr. Peterson were supposed to be inspecting railcars. Mr. Jacobson observed the company truck parked 20 railcars ahead, but did not see Mr. Hummel or Mr. Peterson out inspecting any railcars. Nor did Mr. Jacobson observe any blue flags in the vicinity of the railcars that would indicate that the railcars were being inspected. After 15 minutes of reviewing the jobsite, Mr. Jacobson pulled his truck up behind the company truck assigned to Mr. Hummel and Mr. Peterson. When Mr. Jacobson looked into the cab of the truck, he observed that Mr. Hummel and Mr. Peterson were both sleeping. Mr. Hummel was slumped in the driver's seat with his head down. Mr. Jacobson observed the two men for 30 to 40 seconds before he knocked on the window. When that knock did not waken the two men, Mr. Jacobson knocked louder and then opened the door. Both men awakened at that time. When Mr. Jacobson asked the men what they were doing, neither had an answer. When Mr. Jacobson asked the men whether there were railcars to be inspected, both acknowledged there were railcars that needed to be inspected. Mr. Jacobson directed the men to get to work inspecting the cars. Mr. Jacobson then returned to the ADM plant to notify Dean Petroff, Plant Manager, of what he had just observed. During that same shift, Mr. Petroff summoned Mr. Hummel to a meeting and discharged him from the employment for sleeping on the job.

Mr. Hummel asserts in his testimony that there were no railcars immediately available to inspect and that the railcars in the vicinity of where he parked the truck had already been inspected. Mr. Hummel acknowledges that if there were no railcars in the immediate vicinity that needed inspection, he should have contacted the yard manager for additional railcars to inspect or should have returned to the shop. Mr. Hummel asserts that he decided to wait and do nothing, rather than contacting the yard master or returning to the shop. Mr. Hummel asserts that he was waiting for daylight, but the sun was up at 7:35 a.m. when Mr. Jacobson arrived at the jobsite to find Mr. Hummel sleeping.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

Sleeping on the job may constitute misconduct that would disqualify a claim for unemployment insurance benefits. See *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986). In *Hurtado*, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart.

The weight of the evidence in the record establishes misconduct in connection with the employment based on Mr. Hummel sleeping on the job on October 16, 2017. The weight of the evidence establishes that Mr. Hummel intentionally took a nap on the clock at a time when he knew he was supposed to be performing his work duties. The weight of the evidence establishes that there were indeed railcars that needed to be inspected and that Mr. Hummel elected to take a nap, rather than to get to work with assigned work duties. Even if the administrative law judge were to give weight to Mr. Hummel's assertion that the railcars in the

immediate vicinity had already been inspected, Mr. Hummel testified that in that situation, he knew that he needed to contact the yard manager or return to the shop, but did neither. The weight of the evidence indicates that Mr. Hummel and Mr. Peterson did not count on Mr. Jacobson checking up on them on the morning of October 16, 2017. In short, Mr. Hummel got caught knowingly and intentionally violating an established work rule and knew at the time he violated that rule that the conduct could get him fired. The weight of the evidence in the record does not support Mr. Hummel's assertion that he simply dozed off. The administrative law judge notes that the particular work environment was one that required that employees remain alert to ensure their own safety and the safety of others. Mr. Hummel's conduct demonstrated an intentional and substantial disregard of the employer's interests.

Because the evidence establishes a discharge for misconduct in connection with the employment, Mr. Hummel is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Hummel must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The October 31, 2017, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs