

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L COLLINS
Claimant

APPEAL NO. 13A-UI-07609-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/19/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 19, 2013, reference 02, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on August 7, 2013, in Davenport, Iowa. The claimant participated personally. The employer participated by Andrew Wood, the on-site staffing coordinator, and Corey Lambert, the supervisor on third shift. The record consists of the testimony of Corey Lambert; the testimony of Andrew Wood; the testimony of Anthony Collins; and Employer's Exhibits 1-5.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an employment agency that provides staffing for a client called Con-Trol. The claimant was hired on October 21, 2012. He worked in the warehouse. He was a full-time employee and he worked third shift from 10:00 p.m. to 6:30 a.m. His last day of work was May 21, 2013. He was terminated on May 21, 2013.

A day or two before May 21, 2013, the claimant asked his supervisor, Corey Lambert, if he could take a "power nap" while at work. Mr. Lambert told the claimant he could not do that. If he was sick, he needed to clock out. On May 21, 2013, the claimant took his first break of the night at approximately 12:45 a.m. He did not return to work after his break. Mr. Lambert went out into the parking lot and discovered the claimant was sleeping in a vehicle. He had not clocked out.

The claimant had poor attendance while working for the employer. The claimant received a written warning for poor attendance on May 14, 2013. He had already used up his 56 hours of

personal time that he had been allotted for the entire year. After May 14, 2013, the claimant left early and also had a no-call/no-show.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will be working when he or she is scheduled to work. The employer has the burden of proof to show misconduct.

The claimant is not eligible to receive unemployment insurance benefits. The claimant walked off the job, went to a vehicle, and fell asleep. He was on company time when he did this. The claimant admitted that he had "dozed off" and attributed this to being tired because of child care issues. A significant piece of evidence was the testimony from Corey Lambert that the claimant had been specifically told a day or two before this incident that he could not take a power nap while on the clock. The claimant knew that what he did was contrary to what Mr. Lambert had told him. In addition, the claimant knew that he had attendance problems as he had just been written up for attendance on May 14, 2013. The administrative law judge concludes that the claimant deliberately breached his duty to the employer to be at work and working and not sleeping on the job. Benefits are denied.

DECISION:

The decision of the representative dated June 19, 2013, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css