

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J HICKS

Claimant

APPEAL NO. 08A-UI-00131-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SSW ENTERPRISES INC

COLLIS INC

Employer

**OC: 12/02/07 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Joseph Hicks filed a timely appeal from the December 26, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2008. Mr. Hicks participated. Michelle Anderson, Human Resources Coordinator, represented the employer.

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: Joseph Hicks was employed by SSW Enterprises, Inc./Collis, Inc., as a full-time powder coat line operator from June 11, 2007 until December 4, 2007, when Finishing Supervisor Amanda Radcliff discharged him. Ms. Radcliff was Mr. Hicks' immediate supervisor. Mr. Hicks was assigned to the first shift, 7:00 a.m. to 3:00 p.m.

The sole incident that factored into the discharge occurred on December 4, 2007, when Mr. Hicks inadvertently fell asleep at his work station. Mr. Hicks was standing up on a ladder. Mr. Hicks was assigned to use an air hose to blow water off of parts. Mr. Hicks watched the parts, but did not discern any water. The employer's witness at the appeal hearing acknowledges that the work was boring. At approximately 9:45 a.m., Mr. Hicks nodded off at his work station. Mr. Hicks did not leave his work station. Mr. Hicks remained up on the ladder, leaning against the ladder. Mr. Hicks was not suffering from a lack of sleep, but was suffering from a toothache. Mr. Hicks does not believe he could have been asleep very long before Ms. Radcliff observed him sleeping. Ms. Radcliff summoned Mr. Hicks to the office and discharged him for violating the employer's policy regarding sleeping on the job.

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.

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 evidence in the record establishes that Mr. Hicks inadvertently nodded off at his work station on December 4, 2007. The evidence indicates that the employer had assigned Mr. Hicks to perform a boring and monotonous task where there was little actual work for Mr. Hicks to perform. The evidence fails to establish that Mr. Hicks intentionally went to sleep. The evidence indicates that Mr. Hicks did not leave his work station and did not engage in any "nest building." Though the evidence suggests Mr. Hicks could have been hurt if he had fallen from his work station, the evidence indicates that this incident was an isolated instance of careless conduct on the part of Mr. Hicks and did not represent intentional disregard of the interests of the employer. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hicks charged for no disqualifying reason. Accordingly, Mr. Hicks is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hicks.

DECISION:

The Agency representative's December 26, 2007, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs