

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON D LAMB
Claimant

DIAMOND CRYSTAL BRANDS INC
Employer

APPEAL NO: 10A-UI-02195-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 8, 2010, reference 01, that held he was discharged for sleeping on the job on January 11, 2010, and benefits are denied. A telephone hearing was held on March 29, 2010. The claimant participated. Doug Enabnit, HR Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 9, 2005, as an order puller, and worked his last three years as a material handler for the employer on January 8, 2010. The claimant was discharged for sleeping on the job. The claimant denied that he fell asleep, but was resting his eyes during a break period. The claimant was observed at two intervals in a sleeping posture, but he was not requested to exit his forklift. The claimant was requested to leave work, and the employer mailed him a termination letter on January 11.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 11, 2010.

The employer did not offer the claimant's supervisor or any written statement from others regarding observations of the claimant sleeping on the job. The employer had the power to offer such evidence, and its failure to do so may be inferred against it. Crosser v. IDPS, 240 NW2d 682 (Iowa 1976). Generally, a single incident of sleeping on the job does not constitute job disqualifying misconduct. Hurtado v. IDJS, 393 NW2d 309 (Iowa 1986).

The employer discharged the claimant for a single incident though it believes the conduct occurred during different intervals. If the employer considered the conduct to be serious, there is no explanation why the claimant was not abruptly requested to exit his forklift.

DECISION:

The department decision dated February 8, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on January 11, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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