

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A SETSER
Claimant

APPEAL NO. 07A-UI-04161-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 03/25/07 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, West Liberty Foods, filed an appeal from a decision dated April 12, 2007, reference 02. The decision allowed benefits to the claimant, Gary Setser. After due notice was issued, a hearing was held by telephone conference call on May 7, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Assistant Manager Anne Hocke and Supervisor Ryan Ralston.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Gary Setser was employed by West Liberty Foods from December 18, 2006 until March 23, 2007, as a full-time production worker. He was on light duty for a work-related injury on March 23, 2007, and part of his restrictions was that he was to be allowed to rest for 20 minutes at designated intervals.

That night Supervisor Ryan Ralston was Mr. Setser's supervisor while he did his light duty. At one point during the shift Mr. Ralston saw a group of people standing outside the supervisor's office, looking inside through a large window. When the supervisor came over to find out what was causing such interest, he could see a pair of legs extending beyond a large tool chest. He went inside and found the claimant asleep in a chair and observed him briefly before touching him to wake him up. Mr. Setser said he "must have fallen asleep" and Mr. Ralston told him he was to rest, not go to sleep.

The claimant was returned to his duties and the supervisor notified the medical office, which then met with the claimant and the human resources manager. The claimant was discharged for sleeping on the job.

Gary Setser filed a claim with an effective date of March 25, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for sleeping on the job. Although his work restrictions required the employer to allow him to "rest" at certain intervals, this should not be interpreted as being allowed to go to sleep. While on the clock an employee should be awake and ready to work, even while resting.

Mr. Setser did not participate in the hearing to provide any explanation or extenuating circumstances and did not rebut any of the employer's evidence. He is, therefore, disqualified from receiving benefits as he was discharged for conduct not in the best interests of the employer.

DECISION:

The representative's decision of April 12, 2007, reference 02, is reversed. Gary Setser is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css