

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORGE A JAUREGUI
Claimant

APPEAL NO: 10A-UI-09104-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 05/23/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 17, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on August 30, 2010. The claimant participated in the hearing with his attorney, Jamie Byrne. Becky Jacobson, the human resource manager, and Tony Blackman, a quality assurance supervisor, appeared on the employer's behalf. Olga Esparza interpreted the hearing. During the hearing Employer Exhibits One through Six and Eight through Eleven were offered and admitted as evidence. Claimant Exhibit A was offered but not admitted. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2009. The claimant worked full time. The claimant received a copy of the employer's policy on July 15, 2009. (Employer Exhibits Three and Four.) The policy in part informs employees they will be disciplined if they sleep on the job. The discipline could include termination. (Employer Exhibit One and Two.) Although the employer's policy does not state an employee will be discharged if found sleeping on the job, the employer's policy and practice is to discharge any employee found sleeping on the job. Prior to May 18, the claimant's job was not in jeopardy.

On May 18, the claimant was assigned to light-duty work, sorting colored gloves, because he had light-duty work restrictions after shoulder surgery on April 30 for a work-related injury. When the claimant worked, he wore a brace that immobilized his right arm and shoulder. The claimant sat in a chair to do the work. After the claimant had completed a job of sorting colored gloves, he stretched and tried to relax because his back hurt.

Around 1:00 p.m. Blackman went to the quality assurance locker room to get a clean frock. Blackman walked past the claimant twice. The claimant did not acknowledge Blackman's presence. The claimant appeared to be sleeping. The claimant was sitting in a chair and had his head leaned back. He had a cell phone in his hands. Blackman reported his observations to Bill Knudsen. (Employer Exhibit Eight).

When Knudsen went to the supply room, the claimant did not know who he was. The claimant thought Knudsen was joking with the claimant. The claimant told Knudsen he used his cell phone as an alarm so no one would take the gloves. The claimant intended this comment as a joke.

The employer concluded the claimant had been sleeping at work and suspended him on May 18, 2010. (Employer Exhibit Nine.) The claimant denied he had been sleeping at work. On May 25, 2010, the employer discharged the claimant for sleeping at work on May 18, 2010. (Employer Exhibits Ten and Eleven.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's policy, the employer established business reasons for discharging the claimant. Since the claimant's job was not in jeopardy and was in pain after shoulder surgery, if the claimant dozed for a few moments on May 18, the facts do not establish that he intentionally fell asleep. If he fell asleep, he did so inadvertently and it was not long enough to drop the cell phone he had in his hand. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of May 23, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's June 17, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 23, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css