

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN B MILLER
Claimant

SLEEP PLUS INC
Employer

APPEAL 16A-UI-07317-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/05/16
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 22, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on July 21, 2016. The claimant Ryan Miller participated and was represented by attorney Stu Cochrane. The employer Sleep Plus Inc. participated through manager Laura Ryan. Employer's Exhibit 1 was received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sales associate from August 8, 2007, until this employment ended on May 14, 2016, when he was discharged.

On May 13, 2016, claimant received a written warning. Claimant did not believe that the warning was warranted and was upset it was issued. At 7:05 a.m. on May 14, 2016, claimant sent Ryan a text message indicating he would not be in that morning or the next day because he was still upset about the warning and needed some time away. Claimant was supposed to be in to work at 8:00 a.m. and work until 5:30 p.m. A text exchange then ensued between claimant and Ryan. (Exhibit 1, pgs. 14 – 17). Ryan informed claimant they were short-handed, he needed to come into work, and that if he did not he would be terminated. Claimant stated he was not coming in. At 10:54 a.m., when claimant still had not come in to work, Ryan sent him a message stating that there was no need to come in any further.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant refused to come in to work because he was upset about a written reprimand he received the previous day. Claimant was scheduled to work at 8:00 a.m. on May 14. Less than one hour prior to his start time claimant requested to take that day and the next off. Ryan denied this request, explaining they were short-handed. Ryan informed claimant if he did not come in to work as scheduled his employment would be terminated. Claimant deliberately disregarded Ryan's instruction and warning and chose not to come to work. The fact that claimant was upset and did not agree with a warning he was given the day before does not excuse him from following explicit instructions from his supervisor. Claimant's failure to come in to work as scheduled, even after being warned that termination would occur, is insubordination. Benefits are denied.

DECISION:

The June 22, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs