

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE F SANCHEZ
Claimant

APPEAL NO. 09A-UI-06105-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLUMROSE USA INC
Employer

OC: 03/01/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 7, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 15, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Bonnie Hernandez participated in the hearing on behalf of the employer with a witness, Victor Mendoza. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a sanitation worker for the employer from June 20, 2007, to January 15, 2009. He was informed and understood that under the employer's work rules, sleeping on duty was grounds for disciplinary action.

On January 10, 2009, the claimant's work shift was from 9:30 p.m. to 6:00 a.m. Sometime after 1:00 a.m., the claimant's supervisor instructed the claimant and his sanitation crew members to take a break until work on one of the production lines was completed and cleanup work was available again. They were told that they could go to the break room, the locker room, or outside until they were needed. The claimant and three other sanitation workers went to the locker room. The claimant and two workers were lying on the floor resting while the fourth worker sat in the chair. The shift supervisor came into the locker room and discovered the workers there. The claimant was not sleeping and stood up as soon as the supervisor came into the room. He admitted that he was lying down but insisted that he was not sleeping.

The employer discharged the claimant on January 15, 2009, for allegedly sleeping on the job in violation of the employer's work rules. The claimant had not been warned about this in the past.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The employer claimed the claimant was on an unauthorized break, but I believe the claimant's testimony that he was instructed by a supervisor to take a break until work was available again. I also do not believe the claimant was sleeping. While the claimant made a mistake by lying down on the floor, this does not rise to the level of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 7, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css