

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CHRIS A KOCKORSKY  
2243 – 8<sup>TH</sup> AVE S  
FORT DODGE IA 50501

VAN DIEST SUPPLY CO  
PO BOX 610  
WEBSTER CITY IA 50595

Appeal Number: 04A-UI-12613-DWT  
OC: 10/31/04 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Chris A. Kockorsky (claimant) appealed a representative's November 19, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Van Diest Supply Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2004. The claimant participated in the hearing. Brenda Branca, the personnel manager, and Clark Vold, the production manager, appeared on the employer's behalf. 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 September 23, 1997. The claimant worked as a full-time production operator. The claimant knew the employer's rules prohibited employees from sleeping on the job. The claimant understood the employer would discharge any employee found sleeping on the job.

On February 28, 2004, the employer gave the claimant a warning for an incident involving a knife. The employer warned the claimant that if he were involved in any other disciplinary incident, he would be discharged.

On October 28, 2004, the claimant thought about calling in sick because his lower back bothered him. The claimant did not call in sick because he did not want to accumulate any more attendance points. The claimant did not tell his supervisor that his back bothered him when he reported to work at 3:00 p.m. For the first hour of his shift, the claimant made adjustments on the controls so the employer's production would run efficiently. After the claimant had the valves adjusted, the claimant's back was bothering him so he decided to lie down on the counter to stretch out his back. The claimant took off his hardhat and had a respirator bag propped up against a wall.

While working through the facility, Vold observed the claimant lying on the counter of the control room around 4:15 p.m. While Vold observed the claimant the next five minutes, he did not see the claimant move and noticed that his eyes were closed. Vold concluded the claimant was sleeping on the job. When Vold walked into the control room, the claimant got up. The claimant told Vold he had been lying down because his back was bothering him. The claimant denied he had been sleeping at work.

On October 28, 2004, the employer concluded the claimant had been sleeping at work around 4:15 p.m. The employer discharged the claimant for sleeping on the job even though there had not been problems of this nature prior to October 28.

#### 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).

This case revolves around the issue of whether the claimant was or was not sleeping at work on October 28. If the claimant was sleeping, he committed work-connected misconduct. However, if the claimant was not sleeping, he did not commit work-connected misconduct. Both Vold and the claimant are credible. Since the employer has the burden to establish the claimant committed work-connected misconduct, the employer has not met its burden because a preponderance of the evidence does not establish that the claimant was sleeping at work on October 28. The claimant's failure to tell a supervisor his back was sore or ask permission to take a break so he could stretch his back at most amounts to an error in judgment and does not rise to the level of work-connected misconduct. The evidence does not establish that the claimant intentionally failed to perform the duties for which the employer hired him. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of October 31, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 19, 2004 decision (reference 01) is reversed. The employer discharged the claimant for business reasons. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of October 31, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b