

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH E CASANOVA-DAVIS
Claimant

APPEAL NO. 20A-UI-01088-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 01/12/20
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Sarah Casanova-Davis filed a timely appeal from the February 4, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Casanova-Davis was discharged on January 16, 2020 for sleeping on the job. After due notice was issued, a hearing was held on February 20, 2020. Ms. Casanova-Davis participated. Karyn Goldensoph represented the employer. Exhibits 1 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sarah Casanova-Davis was employed by West Liberty Foods, L.L.C. as a full-time Maintenance Material Handler from July 2018 until January 16, 2020, when the employer discharged her from the employment for sleeping on the job and failure to perform her assigned work duties. Ms. Casanova-Davis's duties involved manning a secured maintenance supply area. Ms. Casanova-Davis was responsible for ensuring that only authorized persons entered the supply area and that those authorized employees only took supplies they were authorized to take to complete the particular maintenance task. Ms. Casanova-Davis was responsible for making certain each maintenance employee requesting supplies had a "ticket" for the supplies. Ms. Casanova-Davis was responsible for tracking supply inventory via her work computer. Ms. Casanova's shift began at 6:00 p.m. and ended at 6:00 a.m. Ms. Casanova-Davis's core work schedule consisted of a repeating pattern of two days on, two days off, three days on, three days off. When Ms. Casanova-Davis requested additional shifts, the employer provided her with additional shifts.

The conduct that triggered the discharge occurred during the overnight shift that started at 6:00 p.m. on Sunday, January 12, 2020 and that ended at 6:00 a.m. on Monday, January 13, 2020. Though Ms. Casanova-Davis knew she would need to be rested in order to remain awake and alert for her shift, she elected to spend her time engaged in other activities and reported for her shift without having had adequate sleep. Twice during the shift, Ms. Casanova

knowingly and intentionally slept at her work station. As Ms. Casanova-Davis slept, members of the maintenance crew figured a way to enter the locked supply cage without a key, without waking Ms. Casanova-Davis, and helped themselves to supplies. The supplies taken from the secured supply area while Ms. Casanova-Davis snoozed were not accounted for by means of the employer's ticketing system and were not accounted for in the employer's computer tracking system. While Ms. Casanova slept, a maintenance employee took a photo on her sleeping with her feet propped on a rack and her head resting on her chest. The employer also documented the sleeping behavior through its surveillance system. Ms. Casanova-Davis was awakened from her slumber when her supervisor called her to issue a verbal reprimand about sleeping on the job. On January 16, 2020, the employer met with Ms. Casanova-Davis to discuss the sleeping behavior. Ms. Casanova-Davis admitted she had been sleeping at work. The employer discharged Ms. Casanova-Davis from the employment at that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Sleeping on the job may constitute misconduct that would disqualify a claim for unemployment insurance benefits. See *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986). In *Hurtado*, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart.

The weight of the evidence in the record establishes a discharge for misconduct in connection with the employment. The weight of the evidence establishes that Ms. Casanova-Davis knowingly and intentionally neglected her duties and knowingly and intentionally slept at work during her January 12-13 shift. Ms. Casanova-Davis's conduct demonstrated an intentional and substantial disregard of the employer's interests. The employer reasonably expected Ms. Casanova-Davis to come to work rested and ready to work. The employer reasonably expected Ms. Casanova-Davis to remain awake, alert and productive during her shift. Ms. Casanova-Davis's decision to sleep instead, undermined the employer's ability to monitor supply requests and account for maintenance supplies removed from the secured supply area. Ms. Casanova-Davis is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Casanova-Davis must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The February 4, 2020, reference 01, decision is affirmed. The claimant was discharged on January 16, 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn