

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN R GOOD**  
Claimant

**MENARD INC**  
Employer

**APPEAL 17A-UI-06404-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/28/17**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 19, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 11, 2017. Claimant participated. Employer participated through general manager Bob Richmond and assistant department manager Chris Sturgill. Employer's Exhibits 1 and 2 were received.

**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 as a full-time general laborer from 2011, through May 8, 2017. Claimant had injuries to his back and knee at work a year earlier. The injuries did not heal properly so he was assigned to work at the conveyor belt to listen for alarms. The work station on that hot day was at the top of the building with little moving air. He suddenly felt dizzy so he sat down on a step to avoid falling onto the conveyor. He did not notify supervisor Jason Crees<sup>1</sup> because the dizziness hit quickly, he thought sitting with a nearby fan would help and it was not long until break. Claimant blacked out until Sturgill stopped the conveyor and the alarm sounded. Claimant leaned forward and stood up. Sturgill asked him if he felt well. He did not. Sturgill did not ask him if he had been sleeping. Claimant went to another work station before going to the break room. After writing a witness statement, Sturgill sent him home. (Employer's Exhibit 1, p. 3) The employer considers sleeping on a job a safety violation but did not provide a copy of the policy or quote from the policy. The employer had not previously warned claimant his job was in jeopardy for any similar reasons. (Employer's Exhibit 2) At a diabetes and cholesterol medication check appointment on May 10, claimant described the situation and his doctor told him those were symptoms of heat stroke.

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<sup>1</sup> Crees, department manager Stacy Hanson, and Levi Stice were not called as witnesses.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

### **Causes for disqualification.**

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.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309 (Iowa 1986).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

An employer can reasonably expect that an employee will be working when scheduled, so sleeping on the job may be considered disqualifying misconduct. Distinguishing analysis focuses on the volitional nature of the employee's conduct. For example, an individual who nods off at work from side-effects after taking a cold pill likely has not committed an intentional act of misconduct. Contrast this with an individual who has made an effort to conceal sleeping from the employer. In this case claimant was working in a hot environment and suddenly became dizzy so sat down. He was readily visible to the employer so did not attempt to conceal the conduct. Whether he fell asleep or lost some degree of consciousness, the act was not intentional. Even had he been sleeping, an employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for driving a pallet jack in an unsafe manner or shipping errors is not similar to sleeping on the job and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The June 19, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs