

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACK A EGGERS**

Claimant

**APPEAL NO. 13A-UI-09727-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 07/14/13**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Zack Eggers filed a timely appeal from the August 20 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 26, 2013. Mr. Eggers participated. Luis Meza represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-10159-JTT.

**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: Zack Eggers was employed by Swift Pork Company, a/k/a JBS as a full-time maintenance worker from 2007 until July 14, 2013, when the employer discharged him for sleeping on the job. Mr. Eggers was a maintenance supervisor for the last 14 months of his employment, and as such was charged with enforcing the employer's policies. Mr. Eggers was assigned to the overnight shift.

The sleeping conduct that triggered the discharge occurred during the shift that started on the evening of July 13 and that was to end on the morning of July 14, 2013. Mr. Eggers went to work without being well rested. He fell asleep at a desk in an office. He later went to a management locker room and laid down on a bench to go to sleep. Dennis Foster, Maintenance General Foreman woke Mr. Eggers in connection with both instances and, after the locker room incident, sent Mr. Eggers home. The employer has a zero tolerance policy for sleeping on the job and had posted the policy in the workplace. Mr. Eggers was aware of the policy and, as a supervisor, shared the responsibility of enforcing the policy. At the time of the sleeping incidents, Mr. Eggers was on a last chance agreement for attendance.

## REASONING AND CONCLUSIONS OF LAW:

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.

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). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

Mr. Eggers concedes he was sleeping on the bench in the management locker room. That conduct lends credibility to the further assertion that had previously been sleeping in the office. Mr. Eggers knew the employer had a zero tolerance policy for sleeping on the job. Despite that, Mr. Eggers elected to appear for work tired. Mr. Eggers first fell asleep in an office where he was on display to subordinates. Mr. Eggers then made a conscious decision to find an out-of-the-way place, the management locker room and went to sleep on a bench. The conduct was in violation of the standards of conduct the employer reasonably expected of employees. Mr. Eggers' status as a supervisor is a further aggravating factor. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Eggers was discharged for misconduct. Accordingly, Mr. Eggers is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The agency representative's August 20 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs