

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETERJ WILSON
Claimant

APPEAL NO: 06A-UI-08553-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/23/06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's August 16, 2006 decision (reference 01) that concluded Peter J. Wilson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 in January 2005. The claimant worked full time. Prior to his separation, the claimant had been working in the maintenance department for about ten months. The claimant understood the employer did not tolerate employees sleeping on the job, but the first time the employer discovered an employee asleep would result in a three-day suspension.

The evening of July 19, 2006, the claimant stayed up late working on his brother's car. The claimant only had 60 to 90 minutes of sleep before he went to work. Instead of calling in sick, the claimant went to work as scheduled. The claimant kept busy during his shift until the very end. Toward the end of his shift, the claimant worked on paperwork to advance himself to a higher maintenance level. While sitting at a desk in the maintenance room, the claimant inadvertently fell asleep. The employer found him the claimant sleeping at work. The claimant had not meant to fall asleep. The employer discharged the claimant on July 20, 2006, for sleeping on-the-clock.

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).

The claimant used poor judgment when he went to work after virtually staying up all night. As long as the claimant kept moving, he was all right. Toward the end of his shift, the claimant had to complete some paperwork and reviewed material to advance to a higher maintenance level. While the claimant was working at a desk, he inadvertently fell asleep. The claimant did not intend to sleep, it just happened. Problems of a similar nature had not happened before.

While the employer established business reasons for discharging the claimant on July 20, the claimant did not commit work-connected misconduct with this one-time incident of inadvertently falling asleep at work. The claimant is qualified to receive unemployment insurance benefits as of July 23, 2006.

DECISION:

The representative's August 16, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 23, 2006, the claimant is qualified to receive unemployment insurance benefits, provide he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw