

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARK A GERRARD**  
Claimant

**HAMPTON HYDRAULICS LLC**  
Employer

**APPEAL 16A-UI-13582-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon discharge for sleeping on the job. The parties were properly notified of the hearing. A telephone hearing was held on January 27, 2017. The claimant Mark Gerrard participated and was represented by attorney William Strong. The employer Hampton Hydraulics LLC participated through Human Resource Safety Manager Diane Harrison and Assistant General Manager Gregg Eiles. Claimant's Exhibit 1 through 7 were received into evidence.

**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 full time as an engineering services manager from October 16, 1985, until this employment ended on November 21, 2016, when he was discharged.

On November 18, 2016, Eiles observed claimant sitting in his chair with his eyes closed. Claimant's head was bobbing and his chin was resting on his chest. When someone walked by claimant and made a loud noise he appeared startled. Based on his observations Eiles concluded claimant had been sleeping at work. Eiles and Sales Engineer Manager Giles Norlin then approached claimant, who admitted to sleeping but said he did not know why he had fallen asleep. This was not the first time claimant had been found sleeping at work. Claimant received prior warnings about sleeping while at work on October 15 and December 7, 2015 and June 28, 2016. (Exhibits 1, 2, and 4). Claimant was advised in the December and June warnings that further incidents would result in termination.

Claimant was told to go home the rest of the day and to return at 4:15 p.m. on November 21 to discuss the future of his employment. On November 21, 2016, claimant sent an email to Eiles explaining that he could not control whether or not he fell asleep at work and that he had a

doctor's appointment scheduled the next day, where he was to have a sleep study done. (Exhibit 6). The email also implies that this was not the first time claimant had told the employer that his sleeping may be due to a medical disorder. The employer nevertheless terminated claimant's employment on November 21. (Exhibit 7). Claimant was later diagnosed with a medical condition, for which he is now being successfully treated, that causes severe daytime sleepiness.

### **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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was falling asleep at work due to a medical condition, for which he was seeking treatment. Claimant's behavior does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Claimant's behavior was not volitional and therefore cannot constitute work-connected misconduct, even if the employer was fully within its rights to impose discipline up to or including discharge under its policy. Inasmuch as employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning, benefits are allowed.

**DECISION:**

The December 12, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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