

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHNTEZ A THOMAS
Claimant

DUBUQUE STAMPING & MFG INC
Employer

APPEAL NO. 18A-UI-10270-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/16/18
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 9, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 29, 2018. Claimant participated personally. Employer participated by Matt Spahn and Amy Weidenbacher. Employer's Exhibits 1-9 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 10, 2018. Employer discharged claimant on September 11, 2018 because claimant was found to be sleeping on the job.

Claimant worked as a heat treat operator for employer. Claimant had multiple problems for attendance issues and problems with following proper manufacturing procedures. Claimant was warned for both, and put on a final warning for attendance.

Claimant stated he wasn't feeling well on September 10, 2018 while he was at work. He came to work because he'd been given a last warning and didn't want to lose his job. Claimant stated that he'd finished his hourly production shortly before 4:00 a.m. He went into the office in the area and put his head down. Claimant stated that no one had attempted to alert him while he was resting and not asleep until a co-worker alerted him.

Employer stated that claimant's supervisor was looking for claimant at approximately 3:50 a.m. When claimant was not at his post, nor anywhere on the production floor, the supervisor found claimant in an office. Claimant had no business reason to be in the office. The supervisor was said to have called to claimant as he appeared to be asleep. Claimant did not respond. The supervisor then got a co-worker of claimant to grab claimant's shoulder. Claimant was awoken and went back to work. He was terminated for sleeping on the job the next day. Employer did not provide any direct witness to the alleged actions.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, claimant gave inconsistent statements regarding his being asleep as he first stated that, "no one woke me up" and then changing that statement when the administrative law judge questioned why he would need to be woken up if he wasn't sleeping. Additionally, claimant offered another questionable statement when he states that he was told not to continue working after he'd met the hour's production goals. Employer's argument that there was much additional work to be done and claimant could have either done other jobs, or produced products in excess of the hourly quota is much more believable. As a result of these multiple questionable statements, the administrative law judge does not believe claimant's statement that he was not sleeping while punched in to do work.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence establishes that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning sleeping on the job. The last incident, which brought about the discharge, constitutes misconduct because claimant was being paid to work while on the clock, and he chose instead to sleep. His argument that he came into work when he wasn't feeling well does not excuse his sleeping on the job. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated October 9, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn