

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BILL GAYETAY
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL 19A-UI-04172-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On May 20, 2019, the claimant filed an appeal from the May 16, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for sleeping on the job. The parties were properly notified of the hearing. A telephonic hearing was held on June 17, 2019. The claimant, Bill Gayetay, participated. The employer, Ryder Integrated Logistics, Inc., participated through witnesses Emily Rummells, Human Resources Generalist; and Joe Stewart, Logistics Manager; and Larry Lampel of Talx/Equifax represented the employer.

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, most recently as a material handler – forklift, from December 6, 2015, until April 22, 2019, when he was discharged for sleeping on the job.

The employer maintains an employee handbook. This employee handbook includes a prohibition against sleeping on the job. Sleeping on the job is listed as an offense that warrants immediate termination. Claimant received and signed off on receiving a copy of this handbook when he was hired.

On April 19, 2019, claimant fell asleep while sitting on his running forklift. Rummells, Stewart, and another employee all witnessed claimant sleeping. Claimant woke up when Stewart shut off his forklift. After claimant woke up, both Rummells and Stewart met with him in the conference room. Claimant explained that he fell asleep because he had been up late with a sick child. Rummells and Stewart suspended claimant pending a full investigation. He was discharged three days later.

Claimant had both PTO and attendance points available on April 19, and he could have taken a vacation day or called in sick. Claimant also could have stood up and stretched to try and wake

himself up. Claimant knew it was dangerous to sleep while on a running forklift, and he knew he could get fired for falling asleep at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has established that claimant was discharged from employment for falling asleep on a running forklift. Claimant chose to come to work and operate heavy machinery after having very little sleep. In falling asleep on the running forklift, claimant could have killed or injured

himself or another employee. He also could have seriously damaged the employer's equipment. Moreover, claimant sleeping while on the clock amounts to theft of company time. Claimant's behavior violates the reasonable expectations that any employer has of its employees. The employer has met its burden of proving that claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The May 16, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn