

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMON SALTZ
Claimant

APPEAL NO: 07A-UI-10406-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

OC: 10-07-07 R: 04
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 29, 2007. The claimant participated in the hearing. Brian Rolf, Operations Manager and Kathy Truelson, Senior Human Resources Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time laser operator for Olympic Steel Iowa from April 11, 2005 to October 8, 2007. On October 8, 2007, Shift Foreman Quentin Palmer found the claimant sleeping on the edge of a chair with his head and back against his laser machine sleeping. Mr. Palmer stated he tried to wake him up by banging on a metal desk and clapped his hands but the claimant did not wake up. Operations Manager Brian Rolf called the claimant's name several times and then shook him by the shoulder before he woke up. Mr. Rolf instructed the claimant to clock out and go home and the employer would let him know the status of his job. After reviewing the claimant's personnel file and noting two e-mails in March 2007 complaining that since the claimant had moved to the third shift he seemed to avoid his work by wandering around and socializing and was also caught reading a magazine behind one of the laser machines during working hours Mr. Rolf also reviewed the claimant's April 2007 performance review which stated his performance was not meeting expectations; he had poor work habits; he was distracted; his attendance was poor; and he socialized excessively. After conducting that review Mr. Rolf terminated the claimant's employment. The claimant contends he was working on another machine and was sleeping during his break and overslept and his co-worker was prevented by management from waking him up. Mr. Rolf testified the claimant did not mention that he was working on another employee's machine and fell asleep on his break or that he overslept at the time of termination.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The evidence shows the claimant was sleeping while on work time and he did not explain any extenuating circumstances to the employer at the time of termination. In addition to sleeping, the employer had warned the claimant about not meeting its expectations, his work habits, being distracted, attendance and excessive socializing. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 26, 2007, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$1,388.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs