

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENT M FISHER
Claimant

APPEAL NO. 14A-UI-00222-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

OC: 12/15/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 6, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in-person hearing was held on February 4, 2014 at Des Moines, Iowa. Claimant participated. Employer did participate through Pamela Anderson, Human Resources Generalist.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a grounds maintenance employee beginning on October 14, 2013 through December 17, 2013 when he was discharged for sleeping on the job. The claimant's coworkers reported to the supervisor, Lance that the claimant was sleeping on the job on December 11, 2013. The claimant had previously been disciplined in November 2013 for failing to perform his required tasks.

At least two coworkers reported to the employer that in the morning of December 11 the claimant was sleeping in his truck earlier in the morning, and then the claimant was sleeping in one of the dorm rooms on the property. The supervisor interviewed all three employees who each reported the same facts. The claimant alleges that the supervisor told him and the others not to work but to play cards. That argument is not believable as it was the supervisor he reported the claimant up the chain of command for sleeping on the job. The claimant had been given a copy of the employer's handbook or policy manual which put him on notice in two separate places that sleeping on the job or even appearing to sleep on the job could lead to his discharge. The claimant was discharged due to the fact that he was sleeping on the job twice in one work day, had been previously warned for failing to follow instructions and had only been an employee for two months.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309 (Iowa 1986). An employer has a right to expect employees not to sleep while being paid to work. The evidence establishes that the claimant was sleeping on the job. His argument that he was told to goof off is not credible in light of his three coworkers telling the employer the same story and that the claimant never went over his supervisors head to explain his side of the story. The employer's evidence does establish sufficient misconduct to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The January 6, 2014 (reference 01) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs