

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SEAN B BURKE
Claimant

ENERIC PETROLEUM CORPORATION
Employer

APPEAL 15A-UI-07821-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/14/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 30, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2015. The claimant participated personally. The employer participated through Renee Freese. Employer witnesses included Peter Fenton and Jason White. Employer Exhibits One through Three were admitted 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: The claimant was employed full-time as a compliance specialist and was separated from employment on April 30, 2015, when he was discharged.

The claimant was discharged for failure to complete an activity tracking log, which was created in response to the claimant's sleeping on the job. The claimant had been diagnosed with sleep apnea, and made the employer aware of his medical condition (Employer Exhibit One). In response, the employer issued a final warning to the claimant based on repeated occasions of sleeping on the job, and enacted accommodations to help minimize the likelihood the claimant would fall asleep while working. These included standing at his work station, and taking walks each hour. He also had to turn in an activity log weekly to his manager tracking his progress of complying with the employer's accommodations. Prior to the claimant's separation, he was given a CPAP sleeping machine to aid in his sleep apnea and was especially fatigued as he adjusted. The claimant reported he continued to perform his walks and standing up, as required.

On April 29, 2015, the claimant was observed by Peter Fenton, slumped in his chair during work hours. The claimant was awoken by Mr. Fenton, who was unaware of the required tracking form or the claimant's history with sleeping on the job, and his sleep apnea. Mr. Fenton had

been his manager for approximately one week at separation time. Due to the realignment of staff and the new management, the claimant failed to timely submit his tracking record to Mr. Fenton for that week, and was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Sleeping on the job can be disqualifying misconduct. An employer can reasonably expect that an employee will be working when scheduled. The analysis in these types of cases focuses on the volitional nature of the employee's conduct. In this case, the claimant provided sufficient medical documentation that he had been diagnosed with sleep apnea, which caused him to be extra fatigued and more likely to fall asleep outside of nighttime hours. The condition also made it hard to obtain restful sleep. The final incident occurred when the claimant failed to turn in his tracking form to his new boss and that the claimant fell asleep, as observed by Peter Fenton, the claimant's new manager, on April 29, 2015. Cognizant of the impact and lack of productivity a sleeping employee can have on a business and office morale, the employer had business

reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally disregarded the employer's interests. After the March warning, the claimant complied with the employer offered accommodations to help stay awake and returned his activity trackers all but once during the transition of his new manager, who was even unaware of the extent of the claimant's condition until discharge.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The June 30, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs