

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN R JONES**  
Claimant

**APPEAL NO. 07A-UI-04437-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ILLINOIS ARMORED CAR CORPORATION**  
Employer

**OC: 03-25-07 R: 04  
Claimant: Respondent (1)**

Section 96.5(2) a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a representative's decision dated April 18, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on May 17, 2007. Claimant participated personally. Employer participated by Ms. Eva Parisi and John Luedtke.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct in connection with his work. Mr. Jones was employed as an armored transport employee from August 26, 2005 until March 28, 2007 when he was discharged from employment for sleeping on the job on March 6, 2007. Although the employer was aware of the allegation that the claimant was sleeping on the job on March 6, 2007, the claimant was not discharged until March 28, 2007. Although the employer was aware of the allegation, the claimant was not discharged until a substantial time had elapsed and was convenient for the employer to do so.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: the claimant was not discharged on March 28, 2007 for a current act of intentional misconduct in connection with his work. The employer was aware of the allegation that the claimant was sleeping on the job on March 6, 2007, however the claimant was not discharged until a substantial time had elapsed when it was convenient for the employer to do so.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For the reasons stated herein, the administrative law judge concludes that the claimant was not discharged for a current act of intentional misconduct on March 2007. Therefore, benefits are allowed.

**DECISION:**

The representative's decision dated April 18, 2007, reference 01, is hereby affirmed. Benefits are allowed, providing claimant meets all other eligibility requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tpn/pjs