

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A BORSCH

Claimant

APPEAL NO: 13A-UI-00179-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 12/02/12

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 31, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Javier Sanchez, the human resource assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2009. He worked as a full-time mechanic. The employer's policy informs employees they are not allowed to sleep while working. Although the policy indicates an employee will be discharged if they sleep on the clock, some employees have been suspended for three to five days and not discharged.

During his shift on November 29-30, the claimant was in the computer room taking a test to become a Level 8 mechanic. Before he took the test, the claimant had not received much training because his supervisor needed him to work on various tasks instead of sending the claimant to class. While taking the test, the claimant wore headphones. He found the test difficult. After he completed the test, he reviewed his notes and was thinking about his answers.

The training supervisor reported that when he came into the computer room, the claimant was sleeping and did not move when the training supervisor talked to another person in the computer room. The training supervisor also reported that he left the computer for a short time and when he returned the claimant was still sleeping.

The claimant denied he was sleeping. He did not hear the training supervisor talking, but he had on headphones, which blocked out outside noise. When the training supervisor came into the computer room, the claimant sat at the computer with his back to the supervisor. When the

training supervisor tapped the claimant on his shoulder, the claimant responded. The supervisor reported he woke the claimant up from deep sleep and sent him to the human resource department. The claimant told the human resource representative that he was not sleeping. The employer sent the claimant home early on November 30, 2012.

On December 7, the employer discharged the claimant for violating the employer's policy, sleeping at work. The claimant's job was not in jeopardy before the November 29 incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's witness did not have any firsthand knowledge about the incident that resulted in the claimant's discharge. The training supervisor that reported the incident did not testify at the hearing. Since there is a dispute in the facts, the claimant's testimony must be given more weight than the employer's reliance on unsupported hearsay information. The evidence does not establish that the claimant was sleeping even if the training supervisor sincerely believed the claimant was sleeping. Since the claimant was discharged for violating the employer's policy - sleeping at work – and he did not, the claimant did not commit work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 31, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employers' account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css