

from April 8, 1999 until August 12, 2005, when Human Resources Manager Jim Hammer discharged him for misconduct.

The final incident that prompted the discharge occurred during Mr. Palomares' overnight shift on August 8-9, 2005. Mr. Palomares was scheduled to begin his shift at 10:30 p.m. At 11:50 p.m., supervisor Gene Kinney contacted Third-shift Superintendent Jeff Schwartz to advise that Mr. Kinney had been unable to reach Mr. Palomares by radio after several attempts. Mr. Kinney advised Mr. Schwartz he believed Mr. Palomares could be located in the locker room asleep and asked Mr. Schwartz to check the locker room. Mr. Schwartz went to the locker room, where he located Mr. Palomares sound asleep. Mr. Schwartz had to call Mr. Palomares' name several times before Mr. Palomares awoke. On August 10, Human Resources Manager Jim Hammer completed an "investigation checklist," in which Mr. Hammer concluded that Mr. Palomares has clocked in at 10:30 p.m. and had gone to sleep until awakened at 12:03 a.m. by Third Shift Superintendent Schwartz. By a letter dated August 12, Mr. Hammer advised Mr. Palomares that he was being discharged for sleeping on the job.

The employer has written Rules of Conduct that prohibit "sleeping during scheduled work hours" and warn that such behavior may result in discharge after investigation and confirmation. Mr. Palomares signed his acknowledgement of the Rules of Conduct on April 27, 2005. Mr. Palomares had not previously been reprimanded for sleeping on the job.

Mr. Palomares established a claim for benefits that was effective September 4, 2005 and has received \$349.00 in benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Palomares was discharged for misconduct in connection with his employment. It does.

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.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence in the record establishes that on August 8 Mr. Palomares acted in willful and wanton disregard of the employer's interests by clocking in for work and then taking a nap in the employer's locker room for approximately one and a half hours. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Palomares was discharged for substantial misconduct in connection with the employment. Accordingly, Mr. Palomares is disqualified for benefits until 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 employer's account will not be charged for benefits paid to Mr. Palomares.

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.

The benefits Mr. Palomares has received constitute an overpayment that Mr. Palomares will have to repay.

DECISION:

The Agency representative's decision dated September 21, 2005, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits paid to the claimant. The claimant is overpaid \$349.00.

jt/kjw