

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J ZUBROD
Claimant

APPEAL NO. 07A-UI-07081-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**OC: 07/01/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Michael J. Zubrod (claimant) appealed a representative's July 19, 2007 decision (reference 01) that disqualified him from receiving unemployment insurance benefits, and held the account of Omega Cabinets Ltd. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2007. The claimant participated in the hearing. Chase Thornburgh, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on April 17, 1989. The claimant worked as a full-time lead person on third shift. Nate Shirk supervised the claimant.

The claimant understood an employee could be discharged if the employee received three written warnings. On December 8, 2005, the employer gave the claimant a coaching session for job performance issues. On July 6, 2006, the employer gave the claimant a written warning for work performance issues. The claimant did not understand that the employer considered the July 6, 2006 warning was a final written warning because of the nature of the work performance issues. The written warning did not advise the claimant that any further problems could result in his termination.

On June 19, 2007, the claimant had bronchitis. The claimant did not feel well, but he reported to work because he did not want to accumulate an attendance point. Shirk knew the claimant did not feel well.

During the lunch break, 30 minutes, the claimant went to his vehicle to rest. The claimant fell asleep in his vehicle and some co-workers saw him. When the claimant was not back in time to start his production line, co-workers reported they had seen him sleeping. After Shirk started the claimant's production line running, he drove to the claimant's vehicle and found the claimant. The claimant had just woken up and went back to work a few minutes late.

The next day, the employer discharged the claimant for sleeping on the job.

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).

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).

When the claimant went to work on June 19, his supervisor knew he was ill. The facts do not establish any previous problems with sleeping at work. With the exception of receiving a warning on July 6, 2006 for a work performance issue, the claimant had not received any subsequent warnings. Since the claimant went to work ill, he used poor judgment in going to work. The facts do not establish that he intentionally went to sleep and failed to report back to work on time from his lunch break. On June 19, 2007, the claimant did not commit work-connected misconduct. Therefore, as of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 19, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance

benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css