

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIAS FLORES ACOSTA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 20A-UI-13403-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On October 28, 2020, Elias Acosta (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 22, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on June 30, 2020 for sleeping on the job.

A telephone hearing was held on December 23, 2020. The parties were properly notified of the hearing. The claimant participated personally and with the assistance of a Spanish-language interpreter. Tyson Fresh Meats Inc (employer/respondent) participated by Lori Direnzo.

Neither party submitted documents as proposed exhibits for the hearing. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was June 4, 2018. Claimant's immediate supervisor was Melvin Hernandez. Claimant worked for employer most recently as a full-time production worker. He was mostly doing cleaning at that time. The last day claimant worked on the job was June 30, 2020. Claimant was discharged on July 6, 2020.

Claimant was discharged for allegedly sleeping on the job. Employer's plant operation's manager and two safety captains reported witnessing him sleeping on the job on June 30, 2020 at about 1 p.m. Employer did not present documentary or testimonial evidence from these individuals to support the allegation that claimant was sleeping at that time.

Claimant acknowledges that he was sitting and taking a break for about five minutes at that time. He had his head down, as he was watching grain going into a silo, but he was not sleeping. The

operation's manager called claimant's name from about 35-40 feet away and claimant immediately responded. Claimant tried to explain at that time what he was doing but does not believe his explanation was understood, due to a language barrier.

Claimant was sent home and told to return on July 6, 2020. He did return on that date and was discharged shortly after clocking in. He was not provided an opportunity to explain the situation prior to being discharged. Claimant had not previously been disciplined. He has not performed work elsewhere since that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated October 22, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on June 30, 2020 for sleeping on the job is REVERSED.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).


Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Employer did not present documentary or testimonial evidence from relevant individuals involved in claimant's discharge to support the allegation that claimant was sleeping at work. In contrast, claimant provided credible, first-hand testimony tending to show he was not sleeping on the job as alleged.

Based on the evidence presented, the administrative law judge cannot find claimant was discharged because of a current act of substantial misconduct. His separation was therefore not disqualifying and benefits are allowed, provided he is otherwise eligible.

DECISION:

The decision dated October 22, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on June 30, 2020 for sleeping on the job is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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January 11, 2021
Decision Dated and Mailed

abd/mh