

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ADAM L OCHOA**  
Claimant

**CARGILL KITCHEN SOLUTIONS INC**  
Employer

**APPEAL 21A-UI-08209-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant, Adam L. Ochoa, filed an appeal from the March 18, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2021. The claimant participated. The employer, Cargill Kitchen Solutions Inc., participated through Dana Spree, Senior Employee Relations Specialist. Dan Guffey and Jesse Lambert testified. The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a BPL Specialist and was separated from employment on January 27, 2021, when he was discharged for sleeping on the job.

Claimant was trained on employer rules, which included notice that sleeping on the job was grounds for discipline or separation (Employer Exhibit 1). Prior to discharge, claimant had received a verbal warning regarding the use of his timecard on June 9, 2020. He had received a written warning for failure to wear a mask on June 19, 2020 and he had been issued a final warning on October 27, 2020 for non-compliance with call in procedures.

Claimant had not been previously warned specifically on sleeping on the job, but was aware that the employer did not want employees sitting around when in between shifts or during break coverage. Mr. Ochoa commented that Mr. Lambert had gone so far as to remove a table from one room so that employees could not sit on it.

The final incident occurred on January 18, 2021 and was reported to Mr. Guffey on January 22, 2021 when he returned from vacation. Claimant was discharged on January 27<sup>th</sup> after employer investigated.

On January 18, 2021, Mr. Lambert went to the room in which claimant was covering for breaks. He was the only person in the room at the time. Claimant was seated with his arms crossed on some ingredients. His eyes were closed. He did not stir when Mr. Lambert walked by or waved his hand in front him. He didn't know that Mr. Lambert took a photo of him using a cell phone. Mr. Lambert believed claimant was asleep for several minutes before waking up. Claimant denied sleeping but was subsequently discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

"Loafing" on company time can constitute job misconduct. *McConnell v. Iowa Dep't of Job Serv.*, 327 N.W.2d 234 (Iowa 1982). When evaluating the evidence presented, the administrative law judge concludes more likely than not, claimant was sleeping at the time Mr. Lambert walked by. Claimant's body language, eyes closed and crossed arms are consistent with sleeping. Even in a loud facility, claimant did not stir when Mr. Lambert walked near him, waved his hand in front of claimant's face or know a photo was taken. At a minimum, he was clocked in and inattentive.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Although claimant had not been formally warned for sleeping on the job, he was on a final written warning for other policy violations and knew that sitting around was discouraged, based upon Mr. Lambert removing a table in another workplace where employees were sitting. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior, specific warning. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated March 18, 2021, (reference 03) is **AFFIRMED**. The claimant was discharged for disqualifying job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

June 16, 2021  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>