

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PHILLIP L PALMER
506 – 3RD ST NW
FORT DODGE IA 50501

VAN DIEST SUPPLY CO
PO BOX 610
WEBSTER IA 50595

Appeal Number: 05A-UI-02657-DWT
OC: 09/26/04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Phillip L. Palmer (claimant) appealed a representative's March 10, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Van Diest Supply Company (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 March 30, 2005. The claimant participated in the hearing. Clark Vold, the production manager, Kathy Osmanski, and Kevin Spencer, a production supervisor, 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 October 12, 2004. The claimant worked full-time as an operator in the employer's production and shipping department. The claimant understood the employer did not allow employees to sleep during work hours. The claimant worked the 7:00 a.m. to 3:30 p.m. shift.

On February 11, 2005, about 1:35 p.m., Spencer observed the claimant in the control room. The claimant was sitting on the desk with his feet stretched out on the table, his head was leaning against a window and he had his glasses off. The claimant was in this position so he could watch a 9-inch monitor. The claimant was monitoring product, as he understood he was required to do for this job. When the claimant did not appear to move for four minutes, Spencer called Vold to report the claimant was sleeping on the job. Vold came and watched the claimant by Spencer or from a window outside the control room for about nine minutes. Vold did not see the claimant move during the time he observed the claimant. Vold concluded the claimant was sleeping.

The room the claimant was in was soundproof. The claimant did not hear the employer. Around 1:44 p.m., the claimant got up off the table to go upstairs to manually fill a tank with water, which he had to do every 20 minutes that day. The employer then went into the control room and asked the claimant why he had been sleeping. The claimant denied he had been sleeping.

Even though the claimant's job was not in jeopardy prior to February 11, the employer concluded the claimant intentionally fell asleep at work. The employer discharged the claimant for violating the employer's policy for sleeping at work.

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).

The claimant knew the employer did not allow employees to sleep at work. Even though the claimant may have “dozed” off when he was monitoring product in the control room on February 11, the facts do not establish that he did this intentionally. The claimant was aware of the time and got ready to manually fill water so a product could be made correctly. This isolated incident may amount to a business reason to discharge the claimant, but does not establish that the claimant committed work-connected misconduct. Therefore, as of February 13, 2005, when the claimant reopened his claim, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant’s base period employers. During the claimant’s current benefit year, the employer’s account will not be charged.

DECISION:

The representative’s March 10, 2005 decision (reference 03) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 13, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant’s current benefit year, the employer’s account will not be charged.

dlw/pjs