

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH M BOWERMAN**  
Claimant

**APPEAL NO. 09A-UI-01419-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LORAS COLLEGE**  
Employer

**OC: 11-16-08 R: 04  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 21, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 17, 2009. The claimant did participate along with his witnesses. The employer did participate through (representative) Regina Noel, Benefits Manager and John McDermott, Director of Physical Plant. Employer's Exhibits A, B and C were entered and received into the record.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a plumber full-time beginning August 26, 1991 through November 18, 2008 when he was discharged.

On November 17, 2008 the claimant admits that he was sleeping on the job in an area where he was not authorized to be in and had no business or work purposes for being there. The claimant was hiding out in an area so he could sleep on the job in hopes of not being detected by his supervisor or coworkers. He was found by Mr. McDermott on the third floor of an unused residence hall that was being remodeled for other uses. The claimant was found lying down with his eyes closed on an abandoned unused bed left over from the days when the building was used as a dormitory. When awoken by Mr. McDermott the claimant admitted he had been sleeping and provided no other explanation or excuse for his behavior. The claimant knew that he was not to be sleeping on the job. At the time he was caught sleeping on the job the claimant had not provided the employer with any doctor's restrictions that required he be allowed to nap while on the job and any restrictions that required he be accommodated in any way.

The claimant had been given a "last chance" warning about his job performance on September 9 and was told at that time that any further issues with his conduct or performance could lead to his discharge.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant deliberately tried to conceal from his coworkers and his supervisor that he was going to sleep on the job by hiding in an area where he had no work or business purpose being. The claimant laid down to take a nap when he was not on a scheduled break or rest period. The claimant knew or should have known that sleeping on the job was prohibited. If the claimant had been ill or unable to work he owed it to his employer to seek help in the health center or to ask to go home; not to hide so that he could take a nap. The claimant had an extensive history of previous discipline, including a last chance warning on September 9. In light of the claimant's previous warnings his sleeping on the job is misconduct serious enough to warrant denial of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The January 21, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs