

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J HIRL
Claimant

APPEAL NO. 07A-UI-00752-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN TV & APPLIANCE INC
Employer

**OC: 12/24/06 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Daniel Hirl, filed an appeal from a decision dated January 22, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 6, 2007. The claimant participated on his own behalf and was represented by Attorney Drew Chambers. The employer, American TV & Appliance, Inc., participated by Human Resources Manager Ann Jackson and General Manager Mike Kapets.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Daniel Hirl was employed by American TV & Appliance from October 10, 2005 until December 4, 2006, as a full-time sales associate. He received a copy of the employee handbook, which provides for discharge of any employee who received four written warnings.

The claimant received written warnings on April 1, June 28, and July 25, 2006, for absenteeism, leaving work without authorization and under false pretenses. On December 2, 2006, General Manager Mike Kapets went looking for the claimant because there was a customer who needed help. He saw the claimant sitting at one of the desks on the sales floor with his arms folded over his chest, his head down and his eyes closed. After watching for a minute or so, Mr. Kapets approached the claimant, who then opened his eyes and straightened up. They went to the office, where the manager accused the claimant of sleeping and he did not deny it. He was sent home pending consultation with the corporate human resources department. Mr. Kapets discharged the claimant by phone on December 4, 2006.

REASONING AND CONCLUSIONS OF LAW:

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 was aware his job was in jeopardy because he had already accumulated three written warnings since April 2006. Mr. Hirl contends that he was not asleep but watching the computer download programs so sales tags could be printed, but admitted he had his eyes closed. He did not explain how he could watch the computer with his eyes closed.

The claimant has denied being asleep but only doing a relaxation exercise recommended by his supervisor to deal with the stress caused by the seasonal increase in business. But the primary purpose of the business was to help customers, and there were customers to be helped while he was "relaxing" in front of the computer. Whether or not he was sleeping or doing his "relaxation exercises," he gave every impression of being asleep on the sales floor, which is not going to give customers a good impression.

If this were an isolated incident, it would not amount to misconduct. However, in combination with his prior warnings regarding failing to follow instructions, leaving the store without permission, and attendance, it does rise to the level of misconduct as a final precipitating event under the provision of 871 IAC 24.32(8). The claimant is disqualified.

DECISION:

The representative's decision of January 22, 2007, reference 01, is affirmed. Daniel Hirl is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw