IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BENJAMIN A NELSON Claimant **PHOENIX CLOSURES INC** Employer	**APPEAL 16A-UI-09707-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/07/16** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 26, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2016. Claimant participated. Employer participated through hearing representative Bob Gabrielsen, office manager Linda Humphrey, plant manager Mark Slattery, and production manager Terri Deroin.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a setup technician from August 1, 2014, and was separated from employment on August 11, 2016, when he was discharged.

The employer has a written policy that lists sleeping as a Group 1 violation. The policy provides that if an employee commits a Group 1 violation they are automatically discharged. Claimant was aware of the policy.

The final incident occurred in the morning of August 10, 2016, during claimant's scheduled shift. Claimant went into his supervisor's office to update the work log and check his e-mail. It was common practice for claimant to use his supervisor's office to update the work logs. Claimant shut the door when he entered the office to keep the office cool. Mr. Slattery came to work early (approximately 4:50 a.m.) on August 10, 2016. Claimant was aware that Mr. Slattery and Ms. DeRoin were coming to work early on August 10, 2016. Mr. Slattery needed a chair so he went to an office to get a chair, but the first office was locked and Mr. Slattery's key did not work. Mr. Slattery then went to the next office, which was claimant's supervisor's office. When Mr. Slattery tried the door, it nudged open. The lights were off in the office. The lights in the office are activated by motion. Mr. Slattery then opened the door further and the lights came on. Mr. Slattery then observed claimant was asleep in his supervisor's chair. Claimant's supervisor does not normally arrive until 6:00 a.m. Mr. Slattery went and got Ms. DeRoin and brought her

to the office. Ms. DeRoin and Mr. Slattery observed claimant was still sleeping. Mr. Slattery called out claimant's name twice to wake him up, but there was no response. Mr. Slattery then clapped his hands loudly, which woke claimant up. After claimant woke up, he got out of the chair and left. Later, claimant came and apologized to Mr. Slattery for falling asleep. Claimant told Mr. Slattery that he was only asleep for five or ten minutes. Mr. Slattery told claimant it had to be longer than that, because the lights turn off after ten minutes if the sensor does not detect any motion for ten minutes. Mr. Slattery told claimant he would have to report the incident.

On August 11, 2016, the employer discharged claimant for committing a Group 1 violation. Claimant had no prior disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The Iowa Supreme Court has found sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309 (Iowa 1986). However, unlike in *Hurtado*, this employer only found claimant sleeping on the job on one occasion. Furthermore, the employer did not find claimant sleeping in some hidden or secretive area, but instead he was found in his supervisor's office where he normally would complete the work logs. Claimant also credibly testified he knew that Mr. Slattery and Ms. DeRoin were going to come to work early that day. It is also noted that claimant did not have any prior disciplinary warnings.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

DECISION:

The August 26, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs