

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN M GARIN
Claimant

APPEAL NO. 11A-UI-08704-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMCAR LLC
Employer

**OC: 05/29/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 23, 2011, reference 01, that concluded he was discharged for misconduct. A telephone hearing was held on August 23, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Jed Hammell, attorney at law. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a machine operator from March 11, 1997, to May 31, 2011. The claimant has suffered from and received treatment for severe sleep apnea for several years. He had received warning for sleeping at work in November 2010 and January 2011.

The claimant received an electrical shock after coming into contact with electrical wires at work on May 10, 2011. He was knocked unconscious from the electrical shock and fell to the floor. A couple of weeks later, the claimant began experiencing headaches and joint pain that later was diagnosed as a possible concussion from his injury on May 10.

The claimant became ill after reported to work on May 31, 2011. He vomited twice that morning. Later, he had to sit down because he felt dizzy and light-headed. He either fell asleep or fainted because the next thing he noticed was his supervisor shaking him. He asked to go home due to his illness, but his supervisor insisted that he would be all right. The claimant returned to work, but later that morning he was brought into the office and discharged for sleeping on the job. It is likely that the claimant's conduct was the result of a concussion he suffered

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant's conduct on May 31, 2011, was due to incapacity.

DECISION:

The unemployment insurance decision dated June 23, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw