

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLE J TOBIAS
Claimant

APPEAL NO. 10A-UI-03760-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CLINTON LLC
Employer

**Original Claim: 02/07/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 2, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 27, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristina Snyder participated in the hearing on behalf of the employer with witnesses, Kevin Wittenauer and Reg White.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a security officer from August 18, 2005, to February 11, 2010. He was informed and understood that under the employer's work rules, sleeping while on duty was prohibited. He was warned about sleeping on duty in December 2009.

The claimant sustained a work-related injury to his shoulder on January 22, 2010. He was released for light-duty, one-armed work and returned to work. He was prescribed medication for pain. One of the side effects of the medication is drowsiness.

The claimant worked a shift from 1:00 to 9:00 a.m. on February 6, 2010. His shoulder was bothering him so he took a half tablet of the prescribed pain pill. He informed a supervisor about this when she asked why he seemed so slow.

At about 7:00 a.m., he was sitting in a chair waiting to go out to the casino floor when he unintentionally dozed off for a few minutes. A coworker who was in the office noticed his eyes were closed so she woke him by tossing a pen at him. The coworker later reported to management that the claimant was sleeping on duty. He was discharged for this on February 11, 2010.

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 2, 2010, 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