

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN J BUCK**  
Claimant

**APPEAL NO. 13A-UI-01370-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS**  
Employer

**OC: 01/06/13**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Benjamin Buck, filed an appeal from a decision dated January 31, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 6, 2013. The claimant participated on his own behalf. The employer, Pilot Travel Centers (Pilot) participated by General Manager Dennis Balk and Maintenance Person Alexander Pruitt.

**ISSUE:**

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

**FINDINGS OF FACT:**

Benjamin Buck was employed by Pilot from December 2011 until January 7, 2013 as a full-time manager trainee working 11:00 p.m. until 7:00 a.m. He received a written warning on December 6, 2012, because the store was dirty, bathrooms not cleaned, shelves were empty and outdated product was on the shelves. In addition, other employees reported he would “disappear” for hours at a time.

On December 27, 2012, Maintenance Person Alexander Pruitt reported to General Manager Dennis Balk that he had seen the claimant asleep in the game room on December 24, 2012. He had taken a picture of Mr. Buck and showed it to Mr. Balk. He further reported that when the claimant did wake up and was questioned about his whereabouts, he said he had been stocking the cooler and had not heard himself being paged on the headset.

By the time the general manager learned of the incident the claimant was off work for over five shifts due to being ill. In the meantime Mr. Balk had discussed the matter with the regional manager to get approval for a discharge. When Mr. Buck returned to work on January 7, 2013, he was discharged. He maintained he had been on his ten-minute break and fallen asleep “accidentally,” but Mr. Pruitt said the break had already been taken before the claimant was found sleeping.

## 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 had already been warned about poor work performance and not being available for lengthy periods of time during his shift. It was his responsibility to oversee the operations of the store on the overnight shift and this was not being done.

When he was found sleeping in a chair inside a driving video game in the game room, it is apparent he went there for the specific purpose of sleeping and hiding himself where he could not easily be seen by anyone looking for him. The administrative law judge does not find it likely he "accidentally" fell asleep taking a break because of the location where he was found sleeping. One does not customarily take a ten-minute break in a video game box.

The claimant was discharged for sleeping on the job. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and the claimant is disqualified.

**DECISION:**

The representative's decision of January 31, 2013, reference 01, is affirmed. Benjamin Buck is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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