

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC T MOSLEY
Claimant

APPEAL NO. 07A-UI-00853-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON WAREHOUSE CO INC
Employer

**OC: 12/17/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Eric T. Mosley (claimant) appealed a representative's January 18, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Jacobson Warehouse Companies, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2007. The claimant participated in the hearing. Bruce Sexton, Chris Gilchrist and Anne Louisan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 22, 2006. The claimant worked as a full-time forklift operator. At the time of hire, the claimant received a copy of the employer's policies. The employer informed the claimant he could be discharged if he slept at work while he was on the clock. The claimant knew the employer did not allow employees to sleep at work.

The claimant worked at night and usually took his dinner break around 3:30 a.m. Employees are supposed to punch out when they take a 30-minute dinner break. On December 20, the claimant forgot to punch out when he went on his dinner break. The claimant went to his car and planned to rest for a few minutes. The claimant fell asleep shortly after he went to his car.

A dock foreman started looking for the claimant around 4:00 a.m. When the employer had not found the claimant by 5:00 a.m., someone went to the parking lot. At 5:15 a.m., the employer found the claimant sleeping in his car. The claimant was still clocked in as working. When Sexton arrived at 5:27 a.m., he woke the claimant and told him he was suspended. The next day the employer discharged the claimant for sleeping while on the clock.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood he could be discharged if the employer found him sleeping when he was on the clock. Although the employer gave another employee a warning about sleeping a few weeks earlier, that employee had only been sleeping for five minutes instead of almost two hours. The claimant's failure to take any precautionary steps to make sure he returned to work in 30 minutes when he made the decision to sleep in his car amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. Therefore, as of December 17, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 18, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 17, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css