

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEVI PALMER**  
Claimant

**APPEAL NO: 12A-UI-07821-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

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

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

**STATEMENT OF THE CASE:**

Levi Palmer (claimant) appealed an unemployment insurance decision dated June 25, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift Pork Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2012. The claimant participated in the hearing. The employer participated through Aurelliano Diaz, Human Resources Manager. 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:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired full time in the maintenance department on February 14, 2011 and became a supervisor in October 2011. He was discharged on June 4, 2012 for sleeping on the job in a concealed location. The employer provides a written warning to an employee who falls asleep on the job in his work area but if an employee is sleeping on the job in any concealed or out of site location, it warrants immediate termination. The claimant received a handbook explaining the differences in these policies at the time of hire.

Product Manager Marco Herrera found the claimant in the upper level of the electrical room and observed him lying on the floor. He went to get Superintendent Jeremy Ruopp and they both watched him for a period of time with no movement. The claimant was on his back with his eyes closed and his hands behind his head. He eventually woke up and denied sleeping.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 4, 2012 for sleeping on the job in a concealed location. He denies knowing the employer's policies regarding sleeping on the job even though he was a supervisor and would presumably be responsible for enforcing the employer's work rules. The claimant did not merely fall asleep but went to a concealed location with the intent to sleep which is disqualifying misconduct, even without a prior warning. The employer has met its burden and benefits are denied. .

## DECISION:

The unemployment insurance decision dated June 25, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged

from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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