

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN G HORNUNG**  
Claimant

**APPEAL NO. 14A-UI-04348-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMMUNITY SCHOOL  
DIST**  
Employer

**OC: 03/30/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 17, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 14, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Sue Wilber participated in the hearing on behalf of the employer with witnesses, Matt Dunbar and William Fiocco.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a lead custodian on the third shift from November 22, 2010, to March 27, 2014. He was informed and understood that under the employer's work rules; he was expected to observe the time periods for breaks and the meal break and to be honest. The claimant was scheduled to work from 11 p.m. to 7 a.m. He and the other custodians on the third shift were allowed two 15-minute breaks and one 30-minute meal break. They were not required to punch out for these breaks.

The claimant and the custodians who worked under the claimant regularly would stay in the break room after arriving at work until about midnight before they when out to start performing their custodial duties. While the claimant spent some of that time consulting with the second-shift engineer about what tasks need to be done, that typically did not take too much time. They often made coffee in the break room before starting work. Much of the time was spent idle. The claimant and the other two third-shift employees still took mid-shift breaks of about 60 minutes on average but sometime the break was up to 90 minutes.

At the end of January 2014, the custodial manager was checking surveillance video of the third shift because the employer was hiring a new third-shift supervisor and he wanted to find out the best time for that person to stop by the building. It was discovered that the claimant and his crew stayed in the break room until around midnight rather than starting their work for the day.

It was also discovered that a mid-shift was being taken of about an hour. Despite this fact, the workers would record working eight hours.

The employer decided to monitor this to determine if it was an isolated situation. Video surveillance was monitored from January 29 to March 17 and it was determined that it was a regular practice for the third-shift crew to stay in the break room until midnight and later take a break on average of 60 minutes. The claimant and his crew would report working for eight hours and were paid for that time.

On March 21, a night that the claimant did not work, the custodial manager reported to building at about 11:50 p.m. and discovered the two other third-shift custodians were asleep in the break room. When the two third-shift custodians were questioned a few days later, they alleged that they took their 15-minute breaks and 30-minute meal break at the beginning of the shift. They initially denied taking any other breaks during their shift.

The claimant was questioned about this on March 25. He admitted he stayed in the break room at the beginning of the shift but was doing work-related tasks. He admitted that he also took a mid-shift break.

The employer discharged the claimant on March 27 2014, for abusing the break policy and not working the hours he recorded on his time sheets. The claimant had not received past discipline for anything similar.

#### **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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence shows the claimant was in the break room for extended periods of time when he should have been working at the beginning of his shift and then taking full breaks later in his shift. In addition, he did not make sure that his crew members abided by the break policy.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated April 17, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css