

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PRISCILLA DAVIS

Claimant

APPEAL NO. 14A-UI-04752-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VENUWORKS OF DAVENPORT LLC

Employer

OC: 04/06/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Priscilla Davis (claimant) appealed an unemployment insurance decision dated April 28, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Venuworks of Davenport, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2014. The claimant participated in the first hour of the hearing and part of the second hour but elected not to proceed further after the employer played an audio recording of her voice. The employer participated through Stacy Early, Human Resources Specialist and Chris Carton, Executive Chef/Food and Beverage Director. Employer's Exhibit One through Six were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time server from May 30, 2012, through March 28, 2014, when she was discharged for sleeping on the job after numerous disciplinary warnings for unrelated issues. A final written warning was issued to her on November 16, 2012, for insubordinate, disruptive and argumentative behavior related to tardiness. The claimant received a written warning on January 11, 2014, for insubordinate and disruptive behavior to a supervisor during a team meeting on January 10, 2014. On February 27, 2014, she received a final written warning for insubordinate behavior directed to a supervisor over the phone. On March 28, 2014, she was missing from the work area and was found sleeping in a closed dressing area.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 28, 2014, for sleeping on the job when she was on a final disciplinary warning. She did not accidentally fall asleep but intentionally went into a closed dressing area to go to sleep. Sleeping on the job is a code of conduct violation, which can be a terminable offense. The claimant's behavior shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 28, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css