

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCINDA A CHRISTENSEN
Claimant

APPEAL NO. 07A-UI-02687-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

**OC: 02/18/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lucinda A. Christensen (employer) appealed a representative's March 14, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Great River Medical Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2007. The claimant participated in the hearing. Rosie Lohman appeared on the employer's behalf and presented testimony from three witnesses: Robin Nevling, Linda Bliss, and Marla Bradham. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 18, 1998. She worked part time (36 hours per week) as a certified nursing aide (CNA) at the employer's medical center. Her last day of work was February 20, 2007. The employer discharged her on that date. The stated reason for the discharge was falling asleep while on duty after being warned.

The claimant routinely worked three 12-hour shifts each week from 7:00 p.m. to 7:00 a.m. She again worked this shift on the night of February 17 to the morning of February 18. When she came on duty she was assigned to sit with a patient in intensive care who was on a suicide watch. Ms. Bliss was the shift supervisor on duty during the shift until 1:00 a.m.; Ms. Bradham was the shift supervisor from 1:00 a.m. through the end of the shift. Both Ms. Bliss and Ms. Bradham heard reports from other employees of the claimant sleeping and/or snoring, and both Ms. Bliss and Ms. Bradham came into the room and found the claimant dozing and then spoke to the claimant, telling her that falling asleep would not be acceptable. Both of them had offered to the claimant to move her to another area if it would help her stay awake, but she declined.

Upon reviewing the information, the employer determined to discharge the claimant on February 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:

- a. Manifest equal culpability, wrongful intent or evil design; or
- b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

The claimant's continued dozing off while on duty after being warned and after being offered being moved to an area where she would be able to stay awake better shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 14, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 18, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw