

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTA T JONES
Claimant

APPEAL NO: 18A-UI-08452-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS
Employer

OC: 07/01/18
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 31, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2018. The claimant participated personally. The employer participated through Leann Klein, director of health information management. Mary (Kathy) DeAngelo also testified. Employer Exhibits 1-6 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a document imaging senior representative and was separated from employment on July 2, 2018, when she was discharged for sleeping on the job (Employer Exhibit 2).

The undisputed evidence is the employer has a reasonable policy which prohibits "sleeping or giving the appearance of sleeping on the job" (Employer Exhibit 1) and the claimant was trained on the policy upon hire. On March 21, 2018, the claimant was issued a warning for reportedly sleeping on the job (Employer Exhibit 3). On June 18, 2018, the employer, through Ms. Klein, spoke to the claimant about reports of her sleeping on the job. At that time, the claimant

informed Ms. Klein she was on new prescribed medication that was causing her to be sleepy, and that she also had a condition with her eyes. The final incident occurred on June 27, 2018, when the claimant was reportedly observed sleeping or giving the semblance of sleeping during a staff meeting led by Ms. Klein. The claimant reportedly was bobbing her head and observed with her eyes closed. No other behaviors were observed consistent with sleeping. The claimant was not alerted or woken up during the meeting by Ms. Klein, who described the claimant's conduct to be for several minutes. The claimant denied dozing off or sleeping during the meeting. She did also state she tried to take medication early enough that it would not affect her by her shift time and that her eyes were bothering her on June 27, 2018. She was subsequently discharged on July 2, 2018 (Employer Exhibit 2).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,844.00, since filing a claim with an effective date of July 1, 2018. The administrative record also establishes that the employer did not participate in the July 30, 2018 fact-finding interview or make a witness with direct knowledge available for rebuttal. Neither employer witness had information available about the fact-finding interview, nor the two representatives listed in administrative record in conjunction with the fact-finding interview. Terence Love was initially listed as the employer point of contact. A Michael Jenkins was then called and a voicemail was provided but he did not respond.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

An employer can reasonably expect that an employee will be working when scheduled. Sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309 (Iowa 1986). In this case, the employer has a reasonable policy prohibiting sleeping on the job. The claimant had received a documented written warning for sleeping on the job on March 21, 2018 (Employer exhibit 3).

Approximately ten days before the final incident, the claimant alerted the employer to being on new prescribed medication that was making her drowsy. She took reasonable steps to use the medication in advance of her shifts to minimize side effects. The administrative law judge is not persuaded the claimant violated the employer's policy when she allegedly closed her eyes or bobbed her head during a staff meeting on June 27, 2018. The claimant credibly denied the conduct for which she was discharged. If the claimant's conduct was indeed egregious enough to warrant discharge, it is unclear why Ms. Klein would allow it to continue during the staff meeting. Based on the evidence presented, the administrative law judge is not persuaded the claimant fell asleep or appeared asleep during the staff meeting as alleged. Even if she did temporarily fall asleep or doze off, the employer has failed to establish it was due to deliberate, intentional, or culpable acts by the employee.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The July 31, 2018, (reference 01) decision is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn