

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J KRAMER
Claimant

APPEAL NO. 08A-UI-00438-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/09/07 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated January 2, 2008, reference 01. The decision allowed benefits to the claimant, Amanda Kramer. After due notice was issued, a hearing was held by telephone conference call on January 29, 2008. The claimant participated on her own behalf. The employer participated by Assistant Director of Nursing (ADON) Gayle Faris, Director of Nursing (DON) Heather Reed, and was represented by TALX in the person of Lynn Corbeil. Exhibits One, Two, Three and Four were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Amanda Kramer was employed by Care Initiatives from March 8 until December 10, 2007, as a full-time certified nursing assistant (CNA) working 10:00 p.m. until 6:00 a.m. At the time of hire she received a copy of the employee handbook. Disciplinary offenses are categorized according to seriousness with "Critical/Type A," offenses being the most serious and will result in discharge for one occurrence. Sleeping on the job is considered a "Type A" offense.

On December 10, 2007, DON Heather Reed received reports from LPN April Helley and CMA Connie Freese, that the claimant had been sleeping on the job the night before. Ms. Reed questioned them and also the CNA Erin Ellingson who came on duty the morning of December 10, 2007, relieving the claimant. Ms. Ellingson reported Ms. Kramer said she did not know what had happened during the night shift because she had been sleeping the entire time.

Ms. Kramer was questioned by the DON and admitted she had been sleeping on the job because she had been sick. She had attempted to call in sick that night but did not give a two-hour notice as required. Company policy is for people calling in sick to find their own

replacement and the claimant attempted to do so and ADON Gayle Faris also tried to find a replacement, but without success.

The employer notified Ms. Kramer she would have to come to work because a replacement could not be found. The claimant did not mention again that she was sick and reported as required. She slept through most of the entire eight-hour shift in the family room of the "locked unit." After interviewing the claimant the DON consulted with the human resources director and the administrator and the claimant was discharged by Ms. Reed.

Amanda Kramer has received unemployment benefits since filing a claim with an effective date of December 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant received the employee handbook which is very clear and specific that sleeping on the job is subject to immediate discharge. Nine residents were assigned to the claimant that evening but she did not do rounds or check on them, it was done by the other staff. Caring for the residents is the responsibility of the employer and the claimant's neglect of her duty in order to sleep jeopardized the residents and subjected the employer to legal liabilities for inadequate staffing. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 2, 2008, reference 01, is reversed. Amanda Kramer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,748.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css