

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE J LAPOLE
Claimant

APPEAL NO. 07A-UI-10365-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA
Employer

**OC: 11/26/06 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Securitas Security Services USA (Securitas) filed an appeal from a representative's decision dated October 31, 2007, reference 02, which held that no disqualification would be imposed concerning George Lapole's separation from employment. After due notice was issued, a hearing was held by telephone on November 28, 2007. Mr. Lapole participated personally. The employer participated by Ted Hudgens, Lead Security Officer, and was represented by Janice Sansouci of Talx Employer Services.

ISSUE:

At issue in this matter is whether Mr. Lapole was separated from employment for any disqualifying reason. If a disqualifying event is established, there would then be an issue of whether he has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lapole was employed by Securitas from April 9 until October 11, 2007 as a full-time security officer. His job was to monitor a console and make rounds of the building to which he was assigned. He was discharged for sleeping on the job.

On October 9, Ted Hudgens was at the monitoring console and observed Mr. Lapole enter a room while doing rounds. When he noted that Mr. Lapole was in the room for approximately 15 minutes, longer than was necessary while doing rounds, he went to the room to check on him. The room Mr. Lapole was in had a glass wall that faced onto the hallway. Mr. Hudgens noted that the drapes on the glass wall were closed. Mr. Hudgens had to pass the office at least seven times per shift during rounds and the drapes to the office were always open in the past. The office had been vacated at least three to four weeks prior to October 9.

Mr. Hudgens peered into the office and observed Mr. Lapole seated with his feet on the desk and sleeping. He went to get another individual to observe Mr. Lapole sleeping. Before he and the other individual could enter the office, Mr. Lapole exited. Mr. Hudgens had already

questioned the security office as to what steps he should take when speaking with Mr. Lapole about the matter. Mr. Hudgens directed Mr. Lapole to go to the security office to speak with human resources. The above matter was the sole reason for the discharge.

Mr. Lapole filed an additional claim for job insurance benefits effective October 7, 2007. He has received a total of \$2,338.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Lapole was discharged for sleeping on the job. It was his contention that he entered the vacant office for the purpose of making a telephone call. It was further his contention that, while in the office, he passed out because his blood sugar was elevated due to his diabetes. The administrative law judge did not find his contentions persuasive. Mr. Lapole went into an empty office and closed the drapes. By closing the drapes, people in the hallway could not view him through the glass wall. This would seem to be unnecessary if he was only in the office to make a phone call. It appears to the administrative law judge that Mr. Lapole closed the drapes so that he would not be seen sleeping.

The fact that Mr. Lapole closed the drapes suggests that he entered the room for the purpose of sleeping. The fact that he was seated at the desk with his feet up is a further indication that his purpose in being in the room was to sleep. Given the evidence tending to establish that his intent was to sleep, the administrative law judge is not inclined to believe that Mr. Lapole passed out due to his blood sugar level. This was not a case in which he dozed off momentarily while working. He intentionally went to an area for the purpose of sleeping. His job was to provide security services on behalf of his employer. A security officer who sleeps on the job compromises the safety and security of the facility and individuals he is required to protect. Mr. Lapole's conduct in sleeping on the job constituted a substantial disregard of the standards the employer had the right to expect.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Lapole has received benefits since filing his claim. A portion of the benefits were used to offset against a prior overpayment. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 31, 2007, reference 02, is hereby reversed. Mr. Lapole was discharged for misconduct in connection with his employment. Benefits are

withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Lapole has been overpaid \$2,338.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs