

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODY D PHILLIPS**

Claimant

**APPEAL NO: 10A-UI-06689-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLEASANT CARE LLP/GREENWOOD MANOR**

Employer

**OC: 04/04/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jody D. Phillips (claimant) appealed a representative's April 27, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Pleasant Care, L.L.P./Greenwood Manor (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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:**

After a prior period of employment with the employer, the claimant most recently began working for the employer on or about September 25, 2009. She worked full time as a certified nursing aide (CNA), primarily on the third shift, 10:00 p.m. to 7:00 a.m. Her last day of work was March 25, 2010. The employer discharged her on that date. The reason asserted for the discharge was the allegation that she had fallen asleep on duty.

About a week prior to March 25 the claimant had been in a resident's room visiting with the resident as the resident was lying in bed preparing for sleep. She was sitting in a soft chair beside the bed. She was in the room for between five and ten minutes. After sitting in the chair and chatting for a few minutes, both the resident and the claimant became sleepy. The claimant realized she was nearing falling asleep, and so got up and left the room. When she got out the nurse's station, she joked about her nearly falling sleep to the other aide who was on duty. The employer later received a report that the claimant had fallen asleep in the resident's room. The employer then discharged the claimant, indicating that her actions were not appropriate and she did not have the skills or experience needed for her position. There had not been any prior similar incidents, and the claimant had not been given any prior formal discipline.

## 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). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her actions relating to her nearly falling asleep while sitting with the resident. Under the circumstances of this case, the claimant's actions were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, were the result of a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's April 27, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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