

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JENNIFER A DAMMANN  
3109 GRAND AVE  
DAVENPORT IA 52803**

**IOC SERVICES LLC  
1641 POPPS FERRY RD B1  
BILOXI MS 39532 2226**

**Appeal Number: 04A-UI-11159-H2T  
OC: 09-19-04 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 11, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2004. The claimant did participate. The employer did participate through Jason True, Human Resources Manager. Employer's Exhibit One was received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a slot attendant and backup supervisor full time beginning March 12, 1998 through September 23, 2004 when she was discharged. The claimant admitted on September 23, 2004 that she had been sleeping on the job during a conversation with Michael

Weih. Susan Walker heard the conversation between Mr. Weih and the claimant wherein the claimant admits that she had been sleeping on the job. When acting as supervisor, the claimant is not required to be in the dispatch office for any length of time. The claimant also admitted that as a supervisor she had caught people sleeping on the job and did not report them to her manager, as she was required to do. The claimant was discharged not only because she herself was sleeping on the job but because she failed to report to her manager as she was required to do. At hearing the claimant admitted that she shut her eyes and dozed off in the dispatch office in the past. The claimant admitted that she had never been given permission to sleep on the job or to allow other employees to sleep on the job.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Sleeping on the job on two occasions, one year apart can constitute job misconduct. Hurtado v. IDJS, 393 N.W.2d 309 (Iowa 1986).

An employer has a right to expect employees to conduct themselves in a certain manner, including requiring supervisors to enforce the rules set out by the employer. The claimant disregarded the employer's rights by allowing others to sleep on the job and by 'dozing' on the job herself. An employer has a right to expect employees not to sleep on the job while they are working. The employer also has a right to expect that the supervisors will enforce the rules against sleeping on the job. When the employer found out that the claimant was dozing herself and allowing others to sleep on the job, they took action immediately upon learning of her infractions. The claimant's actions do constitute a current act of misconduct as they were ongoing for the shifts she worked. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The October 11, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/kjf