

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE C LOKORI
Claimant

APPEAL NO: 10A-UI-17187-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STORY COUNTY
Employer

OC: 06/27/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 10, 2010 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Sandra Hammond appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2010, as a part-time residential assistant. When the claimant was hired, he received a copy of the employer's rules. One rule informed him an employee would be discharged if the employee slept on the clock.

On November 9, the claimant was training by job shadowing with L.G. L.G.'s experience with the claimant was not positive. L.G. reported that while the claimant was documenting services on the computer, he fell asleep for about ten minutes. (Employer Exhibit One.) L.G. did not say anything to the claimant about observing him sleeping and she did not wake him up on November 9.

The next week Hammond talked to claimant about L.G.'s November 9 observation. The claimant denied he fell asleep on November 9. Hammond concluded L.G.'s report was credible and discharged the claimant on November 15 for sleeping at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the information Hammond had from L.G. and knowing L.G., the employer decided L.G.'s report was credible and discharged the claimant for sleeping at work on November 9. Since L.G. did not testify, the claimant's testimony that he did not fall asleep is credible and must be given more weight than the employer's reliance on information from an employee who did not testify at the hearing. The claimant's question as to why L.G. did not say something to him right way on November 9 if she saw him sleeping must be considered in deciding the reliability of the employer's hearsay information. Since the claimant's testimony is credible, a preponderance of the evidence presented during the hearing establishes that the claimant did not fall asleep while working on November 9. Therefore, as of November 14, 2010, the claimant is qualified to receive benefits.

The claimant established a claim for benefits during the week of June 27, 2010. During the claimant's current benefit year, the employer is not one his base period employers. The employer account will not be charged during the claimant's current benefit year.

DECISION:

The representative's December 10, 2010 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant

committed work-connected misconduct. As of November 14, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs