

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA NEAVIN**

Claimant

**MOSAIC**

Employer

**APPEAL NO: 13A-UI-09966-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/28/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 20, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2013. The claimant participated in the hearing with current direct support staff member for the employer, Carol Porter. Paulette Cirksema, Program Coordinator for Residential Services and Lisa Harroff, Employer Representative, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support staff member for Mosaic from May 27, 2011 to June 24, 2013. The employer serves intellectually disabled residents. Three residents are usually present in the house except on weekends when one resident visits her family. The claimant was discharged for sleeping on the job and failing to properly supervise residents.

The claimant worked the third shift with hours of 11:00 p.m. to 7:00 or 8:00 a.m. During the evening of June 6/morning of June 7, 2013, a resident was injured when she fell out of bed and suffered extensive bruising. The resident got up to use the restroom and did not require assistance to do so. The claimant promptly reported the incident and gave the resident ice for the bump on her head and also gave her ibuprofen. She was told to check the resident every hour due to the knot on her head and the resident returned to bed at 3:45 a.m. The claimant checked on her at 4:45 a.m. and every succeeding hour until the resident got up for the day. The claimant did not record the incident in the documentation system until June 9, 2013. That task was expected to be done immediately after an incident.

The claimant reported for work the evening of June 8, 2013, and was scheduled to work until 9:00 a.m. June 9, 2013. When the oncoming staff member arrived, the same resident who had

fallen out of bed was outside and all of the doors were locked. Another resident let her in while the oncoming staff member tried to call the home's phone, rang the doorbell and knocked on the doors before finally banging on the bedroom window where the claimant was sleeping. When the claimant went out to unlock the back door the resident who had been outside was inside. The claimant had overslept.

The claimant and at least three other staff members held the belief that sleeping was allowed at that house when resident J.G., who suffers from frequent severe seizures, was off the premises visiting her family on weekends. At the time of this occurrence the employer only had one "sleep house" and it was not the house where the claimant was assigned. Employees who work in the sleep house are allowed to sleep but they face a pay differential because they are sleeping. Staff at the house the claimant worked at was paid more because they were not allowed to sleep while on duty. The claimant's previous supervisor, who was the program coordinator, told her, and other employees, they could sleep at the house when J.G. was gone on weekends. Consequently, the claimant and at least three other staff members held that belief and often slept at that house on weekends (Claimant's Exhibits A and B).

Upon learning of the incident the employer suspended the claimant and, after the employer conducted an internal investigation, her employment was terminated June 24, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the employer's policy prohibited sleeping at the house where the claimant worked, the claimant honestly believed she was allowed to sleep there during her weekend shifts when J.G. was absent from the house visiting her family. The previous program coordinator, who was also the claimant's former supervisor, told her staff could sleep at the house during their overnight shifts if J.G. was not there and at least two employees slept at the house when they worked weekends and J.G. was visiting her family.

Although the claimant did violate the employer's policy and also overslept, she credibly testified she was not aware she could not sleep at the house during weekends when J.G. was away. The claimant did not intentionally violate or disregard the employer's policy but simply misunderstood the policy with regard to sleeping during the overnight weekend shift. Additionally, the claimant had not received any previous warnings about policy violations and did not have a history of misconduct. Consequently, the administrative law judge finds the claimant's conduct does not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

#### **DECISION:**

The August 20, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css