

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMMA J HEMANN
Claimant

APPEAL NO. 13A-UI-05449-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 04/14/13
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, HCM, filed an appeal from a decision dated May 2, 2013, reference 01. The decision allowed benefits to the claimant, Emma Hemann. After due notice was issued, a hearing was held by telephone conference call on June 13, 2013. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by DON Katie Brumm

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Emma Hemann was employed by HCM from September 2012 until April 16, 2013 as a full-time CNA on the night shift. At the time of hire she received a copy of the employee handbook which sets out the company disciplinary policies. One policy calls for discharge for sleeping on the job.

On the night of April 16, 2013, the night charge nurse found Ms. Hemann and another CNA in an empty resident room, napping and watching TV. This was reported to DON Katie Brumm who arrived at the facility to interview the two. Ms. Hemann admitted to napping briefly and being in the room, leaving the floor unattended. Ms. Brumm consulted with the administrator and the decision was made to discharge the claimant.

Emma Hemann filed a claim for unemployment benefits with an effective date of April 14, 2013. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for sleeping on the job and watching TV in an empty room during her shift. This resulted in her being unavailable to respond to call lights and resident needs. The employer has the obligation to provide quality care to all the residents. The claimant's conduct of removing herself from the floor and sleeping interfered with the employer's ability to provide the level of care required. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 2, 2013, reference 01, is reversed. Emma Hemann is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css