

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN K FIGG
Claimant

APPEAL NO. 08A-UI-04919-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**OC: 04/27/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Karen K. Figg (claimant) appealed a representative's May 20, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Per Mar Security & Research Corporation (employer) would not be charged because she had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2008. The claimant participated in the hearing. Gretchen Goettig, Derek Burkeybile and Aaron Hartshorn appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 22, 2005. The claimant worked as a security guard from 10:00 p.m. to 10:00 a.m. Hartshorn supervised the claimant.

On March 29, 2008, the employer gave the claimant a written warning for falling asleep or being inattentive at work. When Burkeybile gave the claimant the written warning, he told her this was her final warning for this type of occurrence. The written warning, however, indicates further problems could result in the claimant's suspension or termination. The claimant apologized for the incident that she received the warning for and explained that she had recently gone through personal tragedies that affected her work.

On April 26, Hartshorn checked on the claimant during a route site audit. When he arrived, he shined his headlights into her vehicle. The claimant's head was down. She did not react. He then turned a spotlight on the claimant. She did not move. After observing the claimant for about three minutes he took a couple of pictures of the claimant with his cell phone. The claimant did not move. Hartshorn then knocked on the window of her vehicle. She acted startled and rolled down her window. Hartshorn did not tell the claimant that he concluded he

found her sleeping at work. Hartshorn reported his observation to management, Burkeybile and Goettig.

On April 28, 2008, Burkeybile talked to the claimant about the April 26 incident and that Hartshorn concluded she had been sleeping on the job. She denied that she had been sleeping when Hartshorn arrived. The employer, however, concluded she had been sleeping and discharged her for the April 26 incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

Although the claimant did not acknowledge that her job was in jeopardy when she received the March 29, 2008 written warning, she should have known at that time that if the employer found her inattentive or sleeping on the job again, she would be discharged. The claimant's testimony that she was not sleeping on April 26 is not credible. The fact she did not recognize, react or move when Hartshorn drove up, shined his light and spotlight into her vehicle and he took pictures of her before he knocked on her window establishes by a preponderance of the evidence that Hartshorn found the claimant sleeping on the job. Therefore, the employer established that the claimant again violated the employer's policy after she had been warned for sleeping on the job and discharged her for work-connected misconduct. As of April 27, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's May 20, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 27, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css