

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TENNILLE E SMITH
Claimant

APPEAL NO. 14A-UI-00005-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

OC: 12/08/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allen Memorial Hospital (employer) appealed a representative's December 24, 2013 decision (reference 01) that concluded Tennille Smith (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 27, 2014. The claimant participated personally. The employer participated by Steve Sesterhenn, Vice President of Human Resources; Stacey Peyton, Human Resources Business Partner; and Kathryn Hesse, Supervisor of Patient Access.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 8, 1996, as a full-time admitting technician. She sat at a switchboard and relayed emergency codes and other calls. The claimant signed for receipt of the employer's handbook on May 8, 1996. The employer's policy is to terminate an employee for one incident of sleeping on the job but the incident must be seen by a supervisor.

On March 6, 2013, the employer issued the claimant a written warning for costing the company \$58,000.00. The employer also issued the claimant an action plan on March 6, 2013. The employer notified the claimant in the action plan that further infractions could result in termination from employment. The claimant did follow the instructions she was given. At the time the warning was issued she discovered the instructions were wrong.

On or about November 22, 2013, a co-worker reported to the employer that the claimant was sleeping at work. The employer did not discuss the allegations with the claimant. The claimant had been diagnosed with sleep apnea, diabetes, hypertension, and was pregnant. She did not discuss her medical conditions with her employer. On December 6, 2013, the employer saw the claimant with her eyes closed, arms at her side, seated at the switchboard, not answering calls

for about one minute. The employer spoke loudly from ten feet away and startled the claimant. She began to answer calls. On December 9, 2013, the employer terminated the claimant for sleeping on the job.

The claimant filed for unemployment insurance benefits with an effective date of December 8, 2013. She received \$2,448.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on December 23, 2013, by Stacey Peyton.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the

absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for one incident of sleeping on the job that was seen by the supervisor. This one incident does not rise to the level of misconduct. The claimant had medical issues that were disclosed to the employer at the time of separation but the employer did not stop the separation. The employer did have concerns about the importance of the claimant's position in relation to the calling of codes. However, two weeks prior to the supervisor seeing the claimant sleep when other incidents were reported, the employer took no action. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 24, 2013, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css