

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AHMED J ARADAIB
Claimant

APPEAL NO. 18A-UI-10731-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 10/07/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ahmed Aradaib (claimant) appealed a representative's October 25, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with WesleyLife (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 13, 2018. The claimant participated personally. The employer was represented by Caroline Semer, Hearings Representative, and participated by Jaymie Banks-Westfield, Director of People and Culture. The employer offered and Exhibit 1 was received into evidence.

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 March 15, 2017, as a full-time certified nursing assistant. He generally worked from 10:00 p.m. to 6:00 a.m. but offered to work other shifts. The claimant signed for receipt of the employer's handbook on April 26, 2017. The employer had no policy prohibiting sleeping at work during break times. Sometimes the claimant worked an eight-hour shift and did not get any breaks.

On May 1, 2018, the employer called the claimant on the telephone and told him he was not allowed to sleep during break times. If he wanted to sleep, he could go to his car. The claimant denied he had been sleeping. The employer notified the claimant that further infractions could result in termination from employment. The claimant did not sign for receipt of the warning and he did not receive a copy.

On October 10, 2018, the director of nursing telephoned the claimant and terminated him for sleeping during his shift on October 9, 2018. The claimant denied the allegation. He was sitting in a chair in the hallway outside a resident's room while the resident used the restroom. He did not want to be too far away from the resident. A nurse thought the claimant was sleeping, may have taken a picture, and told a manager. The manager told the director of nursing. The

director of nursing may have seen the picture or a video of the hallway, or believed the allegation because of the previous allegation of sleeping.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony and evidence but chose not to provide any for the hearing. It could have offered pictures and video or the testimony of any of the three people who allegedly saw the claimant sleeping or saw pictures/video of the claimant sleeping. It did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's October 25, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs