

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GENNITA A LEE
Claimant

APPEAL NO: 13A-UI-03934-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 03/03/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's March 27, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jenny O'Brien and Derek Gitsch appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2008. Since July 8, 2012, the claimant worked as a part-time counselor. The claimant's job required her to provide support to adults with developmental disabilities who lived in the employer's homes.

On October 12, 2012, the claimant signed an agreement that stated she understood if the employer discovered her sleeping at work again, she would be terminated. The claimant informed the employer she has sleep apnea. But she did not give the employer any paperwork indicating she had a medical condition that resulted in the claimant falling asleep without any advance warning. The claimant did not ask the employer for any work accommodations.

On March 6, 2013, the claimant reported to work for her 9 a.m. to 2 p.m. shift. Gitsch received a call from a resident around 10:40 a.m. that the claimant was asleep at work. Gitsch called the claimant on her cell phone and on the house phone, but she did not answer either phone.

Gitsch drove to the house where the claimant was working. When he approached the house, he noticed from the picture window that she was asleep in a recliner. Gitsch found the television on very loud and the claimant's cell phone was in her lap. Gitsch had to wake up the claimant.

After the claimant woke up, she made the comment, "I was doing so well for so long." Gitsch suspended the claimant and sent her home. The employer discharged the claimant as of March 6, 2013, because she was again found sleeping on the job and violated the October 2012 agreement.

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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known since mid-October 2012 that if the employer discovered her sleeping at work again, she would be discharged. Even though the claimant asserted she has a medical condition that can cause her to fall asleep without warning, the claimant did not provide the employer with any medical documentation. She did not provide any documentation for the hearing to support that she has a medical condition. It is difficult to understand why her treating doctor did not give her any work restrictions if the claimant had a medical condition that could cause her to fall asleep without any notice,

Since the claimant had not had any problems for about five months, the evidence suggests she had control over whether or not she slept at work. As a counselor for adults with developmental disabilities, the claimant's job required her to remain awake during work. The evidence does not establish that the claimant took reasonable steps on March 6, 2013, to make sure she did not fall asleep at work after she had been warned her job was in jeopardy in October 2012. The employer discharged the claimant for work-connected misconduct – violating the October 2012 work agreement and sleeping on the job. As of March 3, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 27, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 3, 2013. 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/pjs