

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORETTA SVEBACK
Claimant

APPEAL NO. 07A-UI-06864-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMUNITY ACTION OF
SOUTHEAST IOWA**
Employer

OC: 06-17-07 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 5, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2007. The claimant participated in the hearing. Sandra Schafer, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time teacher II for the Early Head Start Program for Community Action of Southeast Iowa from November 12, 2002 to June 18, 2007. The employer testified it terminated the claimant's employment for sleeping on the job June 15, 2007, after her supervisor, Roxanne Dobson, reported she came into the room with a group of children from recess and observed the claimant sleeping for approximately 20 minutes but did not wake her up. The claimant denies that she was sleeping but acknowledges she was rocking a baby to sleep and closed her eyes to try to get him to close his eyes. She was aware that another staff member brought in another child to change his diaper while the others were out for recess and that she actively participated in preparing lunch when the children returned from recess. The employer told the claimant she was being discharged for a poor evaluation, completed by her supervisor, but the employer had not brought those issues to the claimant's attention prior to the termination. The employer told the claimant about the sleeping allegations after the termination. The claimant was on a 13-week medical leave of absence and returned two weeks prior to the termination. During that timeframe the claimant was absent due to properly reported illness for a urinary tract infection and then off because of the flu and had a doctor's excuse for that absence as well. She also requested three days off because her son was graduating and she was having out-of-town company. On June 12, 2007, the claimant overslept because she was sick and called Ms. Dobson at 8:30 a.m. and told her she was ill but would be in to work.

Ms. Dobson told her to stay home and then the program director called and told her to stay home for the next two days and return to work June 15, 2007. The claimant made a complaint about Ms. Dobson prior to her medical leave but no action was taken and the claimant believed Ms. Dobson retaliated against her for her complaint in the evaluation and that her job was in jeopardy because of that complaint.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant's description of the events of June 15, 2007, that she was not sleeping, was credible as she provided details of the timeframe in question that she would not have known had she been sleeping and the employer's witness did not have first-hand knowledge of the incident to

contradict the claimant's testimony. Additionally, the employer told the claimant she was being discharged because of her evaluation, an evaluation completed by her supervisor, against whom the claimant had filed a complaint prior to taking medical leave. While the claimant was absent several days upon her return from medical leave, she had doctor's excuses, except for possibly the last week of her employment when the employer instructed her to stay home because she was ill, and for her prearranged time off for her son's graduation. Under these circumstances the administrative law judge must conclude that the employer has not established the claimant was sleeping during work or that her work performance was so poor as to warrant termination. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 5, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css