

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY S STOKES
Claimant

APPEAL NO. 13A-UI-03399-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 08/26/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 15, 2013, reference 03, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 23, 2013. Claimant participated. The employer participated by Mr. James Hunter, Center Director.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tiffany Stokes was employed by TM1 Stop, LLC from May 2, 2011 until February 15, 2013 when she was discharged from employment. Ms. Stokes was employed as a full-time customer service telephone representative and was paid by the hour.

Ms. Stokes was discharged on February 15, 2013 when she was again found sleeping on the job. The claimant, who suffers from sleep apnea, had ongoing issues with falling asleep on the job and had been verbally counseled on numerous occasions that the conduct was unacceptable.

Leading up to the decision to terminate Ms. Stokes, the claimant had been observed on more than five occasions by the center director, Mr. Hunter. The center director specifically asked Ms. Stokes to provide medical documentation verifying her medical condition. Ms. Stokes did not provide the requested documentation and did not indicate to the center director that she had previously supplied it to the company. Due to the repetitive nature of the claimant's sleeping on the job and her failure to provide any documentation after being requested to do so by the center director, a decision was made to terminate Ms. Stokes when she was next observed sleeping on the job on February 15, 2013.

It is the claimant's position that because of her sleep apnea it is necessary for her to obtain rest and to use a newly acquired sleep apnea machine during the hours that she is not scheduled to work. The claimant, however, has childcare obligations and often is unable to get more than two hours of sleep during non-working hours due to her childcare obligations.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that the claimant had fallen asleep on the job on numerous occasions and that the employer in the past had repeatedly issued verbal warnings to Ms. Stokes about sleeping on the job. Ms. Stokes maintains that she had provided medical documentation in June of 2012 about her medical issue. The evidence in the record, however, establishes that the claimant had been warned on a number of occasions after that

date about sleeping on the job and that the claimant did not indicate that she had previously supplied medical documentation about the problem to the employer. The employer's center director testified that he had made at least two requests for Ms. Stokes to provide medical documentation leading up to his decision to terminate the claimant and that a decision was made to discharge her when no medical documentation was provided and the claimant continued to sleep on the job.

The administrative law judge concludes based upon the evidence in the record that the claimant's continuing to sleep on the job without providing medical documentation about the issue when requested to do so by the center director showed a disregard of the employer's interests and standards of behavior that the employer had a right to expect of its employees. The claimant testified that she often did not get sufficient sleep during non-working hours due to personal childcare obligations. The employer's request that the claimant provide medical documentation about the cause of her sleeping on the job was both reasonable and work related. The claimant did not provide the documentation nor inform her employer that she believed that it had been previously supplied to the company.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in this matter. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 15, 2013, reference 03, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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