

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BRYAN SHAW  
112 ½ E WASHINGTON  
IOWA CITY IA 52240**

**HCM INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03575-ET  
OC 02-15-04 R 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 19, 2004, 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 April 22, 2004. The claimant participated in the hearing. Nancy Upmeyer, Director of Nursing and Jay Allen, Director of Maintenance, participated in the hearing on behalf of the employer.

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 CNA for HCM Inc. from March 3, 2003 to February 12, 2004. On February 5, 2004, Director of Maintenance Jay Allen observed the claimant sleeping

on the couch in the west lobby from approximately 1:30 a.m. to 4:30 a.m. On February 6, 2004, Mr. Allen saw the claimant sleeping on the same couch from approximately 1:00 a.m. to 4:00 a.m. On February 8, 2004, Mr. Allen witnessed the claimant sleeping in a chair in the lobby from approximately 2:00 a.m. to 4:15 a.m. Mr. Allen did not say anything to the claimant at the time or wake him up. On Monday, February 9, 2004, Mr. Allen reported the situation to Administrator Kim Howser and the employer spoke to two night nurses, one of whom said she was unaware of the claimant sleeping and the other whom originally stated he saw the claimant studying but did not see him sleeping. That nurse called the employer back one hour later and said there was a period of nearly two hours February 8, 2004, that he did not see the claimant. The employer testified the nurses were on the other end of the building and because Mr. Allen was doing the lobby floors it is unlikely the nurses would have walked through that area. The claimant denies sleeping on the job and stated he was sitting on a couch in the west lobby February 5, 2004, between 1:45 a.m. and 4:00 a.m. when not answering call lights. He testified he believes he was discharged because his one-year employment anniversary was approaching and he would have received ten days of vacation at that time. The employer's policy, signed by the claimant, states that sleeping while on duty is cause for immediate termination. The employer terminated the claimant's employment February 12, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies that he was sleeping on the job, Mr. Allen's testimony was credible and even the claimant admitted there was no animosity between he and Mr. Allen or any reason for him to fabricate his story. The claimant knew that sleeping on the job violated the employer's policy and was cause for immediate termination. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 19, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjf