

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE J WILLIAMS**  
Claimant

**APPEAL NO. 07A-UI-06137-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 05/20/07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 12, 2007, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on July 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Heiderscheit participated in the hearing on behalf of the employer with witnesses, Dave Lehr and John Bellini. Exhibits 1 through 6 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a night monitor for the employer from January 15, 1996, to May 22, 2007. The claimant was informed and understood that under the employer's work rules, sleeping on duty was grounds for discipline. The claimant was warned and placed on 90-day probation on January 24, 2007, for failing to properly supervise the adolescent clients she was responsible for monitoring on January 16. While the claimant was on duty, two clients had gone into each other's bedrooms without the claimant's knowledge. Afterwards they had hickeys on their necks that they had given each other. One of the clients alleged the claimant was asleep on duty when they went to each other's room so the claimant's supervisor emphasized in the warning that the position required her to remain awake. She also received a warning on April 4, 2007, after she insisted on taking time off on March 28 and 29, after her request for time off was denied by her supervisor.

On May 19, 2007, the claimant was in a chair in the staff office watching television with the lights off in the room. The room has windows on three sides to allow the staff member to monitor the clients' activities. The claimant fell asleep in the chair. A supervisor assigned to do spot checks of the employer's facilities found the claimant asleep. He saw her eyes closed and she was initially unresponsive until he rapped on the door with a flashlight. When he told the claimant that he was doing spots checks and would have to report her sleeping to management, she said okay and remained in the chair until he left.

The employer discharged the claimant on May 22, 2007, for sleeping while on duty.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I am convinced by the evidence that the claimant was asleep in the chair. To believe otherwise would require me to decide that Lehr manufactured the story to target the claimant when he said the claimant's eyes were closed and the claimant was unresponsive for two minutes until he rapped on the door with the flashlight. The claimant denied that she was asleep, that her eyes were closed, and that Lehr rapped on the door with the flashlight. She insisted she heard Lehr before he came up to the room. She testified that he said you better not be sleeping before he came into the room and she responded okay. The claimant's testimony is not logical or persuasive. Lehr was performing checks of all the facilities that evening to find out if anyone was asleep. It would make no sense for him to call out "you better not be sleeping" before he came into the room. The claimant's testimony is not credible and likely was influenced by the fact that she was dozing when Lehr came in.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. This is especially true after the claimant had received a warning for similar conduct in January 2007. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated June 12, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs