

**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**

**GLADYS N THOMPSON
2923 S CYPRESS
SIOUX CITY IA 51106**

**BOYS & GIRLS RESIDENTIAL
TREATMENT CENTER INC
PO BOX 1197
SIOUX CITY IA 51102-1197**

**Appeal Number: 05A-UI-06013-CT
OC: 05/15/05 R: 01
Claimant: Respondent (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Boys & Girls Residential Treatment Center, Inc. (Center) filed an appeal from a representative's decision dated June 2, 2005, reference 01, which held that no disqualification would be imposed regarding Gladys Thompson's separation from employment. After due notice was issued, a hearing was held by telephone on June 27, 2005. Ms. Thompson participated personally. The employer participated by Mark Nielsen, Human Resources Specialist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Thompson was employed by the Center from May 17, 2004 until May 13, 2005 as a full-time residential counselor. The Center houses children under the age of 18 who are undergoing treatment. Ms. Thompson was discharged for sleeping on the job.

Ms. Thompson received a written warning on May 3, 2005 for sleeping on the job and leaving children unattended. The warning was based on complaints filed by several residents. The decision to discharge was based on a May 13 report from a coworker who indicated that Ms. Thompson was sleeping while on duty on May 8. At all times material to this decision, she was working from 2:30 p.m. until 11:00 p.m. As a result of the report from the coworker, Ms. Thompson was discharged on May 13, 2005. Sleeping on the job was the sole reason for the discharge.

Ms. Thompson has received a total of \$960.00 in job insurance benefits since filing her claim effective May 15, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Thompson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Thompson was discharged for sleeping on the job after being warned. Her primary responsibility was to monitor the activities of the children in her care. She could not do this if she was sleeping. Any number of problems could arise if adolescents undergoing treatment are left unattended. Ms. Thompson's conduct constituted a substantial disregard of the standards the employer had the right to expect. For the above reasons, it is concluded that disqualifying misconduct has been established and benefits are denied.

Ms. Thompson has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 2, 2005, reference 01, is hereby reversed. Ms. Thompson was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Thompson has been overpaid \$960.00 in job insurance benefits.

cfc/pjs