

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA COLLIER
Claimant

APPEAL NO: 15A-UI-00897-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/28/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 12, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 13, 2015. The claimant participated in the hearing. Connie Harmon, Administrator; Ann Watkins, DON; and Alyce Smolsky, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 LPN charge nurse for Care Initiatives from September 29, 2011 to December 30, 2014. She was discharged after being accused of sleeping on the job.

The claimant worked the overnight shift from 6:00 p.m. to 6:00 a.m. On December 28/29, 2014, the claimant worked her scheduled shift. On the morning of December 29, 2014, CNA Ginny Condon called Administrator Connie Harmon to report the claimant was sleeping for 45 minutes during her shift the previous night. She said the claimant was sleeping in the early morning hours but did not give the time she was alleged to have been sleeping (Employer's Exhibit One). Ms. Condon said she and the other CNA tried to wake the claimant three times by calling her name but she did not wake up and consequently they roused her by shaking her shoulders (Employer's Exhibit One). Ms. Harmon asked Ms. Condon to come in and provide a written statement and she did so December 30, 2014. The employer notified the claimant her employment was terminated during a meeting held December 30, 2014, after it received Ms. Condon's written statement.

The claimant denies she was sleeping and that Ms. Condon and the other CNA woke her. She believes Ms. Condon and the other CNA had an issue with her because she frequently told them to perform their job duties instead of sitting in the recliners on the floor.

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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

While the employer alleges the claimant was sleeping on the job, the claimant denies sleeping and that she was ever awoken by the CNAs. Ms. Condon provided a written statement but did not participate in the hearing and subject herself to questioning. The claimant's first-hand

testimony is more persuasive than a written statement from a witness who did not present herself for questioning. The claimant's testimony was credible. Therefore, benefits must be allowed.

DECISION:

The January 12, 2015, reference 01, decision is affirmed. 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/pjs