

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY L GANGSEI**  
Claimant

**APPEAL NO. 08A-UI-08153-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUR OAKS INC OF IOWA**  
Employer

**OC: 08/17/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Four Oaks, filed an appeal from a decision dated September 5, 2008, reference 01. The decision allowed benefits to the claimant, Jeffrey Gangsei. After due notice was issued a hearing was held by telephone conference call on September 29, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Vice President of Human Resources Karen Bruess, Human Resources Generalist DJ Castelein, Night Supervisor Maria Thorne, Program Coordinator Rodney DeRoos and Overnight Worker Brad LeClere. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jeffrey Gangsei was employed by Four Oaks from November 26, 2007 until August 4, 2008 as a full-time night worker. At the time of hire he received a job description which specifically notified him the overnight worker position was required to remain awake and alert at all times. Another document for "night worker expectations" states very firmly it was "no sleeping shift" even on breaks.

The claimant had received a written warning on July 7, 2008, for sleeping on the job on June 23, and 30, 2008. It notified him his job was in jeopardy if there were any further incidents. On the night of July 25, 2008, Overnight Worker Brad LeClere, and other workers from another residence, saw the claimant sleeping on several occasions on that shift. This was reported to Overnight Manager Maria Thorne who interviewed the witnesses and also Mr. Gangsei. He admitted he was sleeping and she told him it was unacceptable. The matter was referred to the human resources department for further action. A review of the claimant's file was done by Vice President of Human Resources Karen Bruess and she agreed with Ms. Thorne's recommendation to discharge. Ms. Thorne notified the claimant of the decision on August 4, 2008.

Jeffrey Gangsei filed a claim for unemployment benefits with an effective date of August 17, 2008. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

### **REASONING AND CONCLUSIONS OF 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 claimant had been advised his job was in jeopardy as a result of sleeping on the job. As a care provider it was absolutely essential he remain awake and alert to care for the residents under his care, and this he failed to do. This was not an isolated incident but one of several. Mr. Gangsei did not participate in the hearing and did not provide any extenuating circumstances for his failure to remain awake as he was required to do. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of September 5, 2008, reference 01, is reversed. Jeffrey Gangsei is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css