

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY E BROCKERT
Claimant

APPEAL NO. 11A-UI-10333-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 05/0/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 27, 2011, reference 01, that held she was discharged for misconduct on July 5, 2011, and which denied benefits. A telephone hearing was scheduled for September 16, 2011. The claimant and employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The claimant worked for the employer as a part-time counselor from August 26, 2008 to July 5, 2011. The employer discharged the claimant for sleeping on the job. The claimant had the responsibility to care for disabled person(s), and her sleeping on the job denied them proper supervision.

The claimant and employer were not available when called for the hearing at the phone numbers provided.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on July 5, 2011.

Generally, a single incident of sleeping on the job does not constitute job-disqualifying misconduct. Hurtado v. IDJS, 393 NW2d 309 (Iowa 1986). In this matter, claimant was responsible for supervising disabled persons who depended on her care, which makes her shortcoming rise to the level of job-disqualifying misconduct.

DECISION:

The department decision dated July 27, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on July 5, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw