

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN S SMITH
Claimant

LINK ASSOCIATES
Employer

APPEAL 21A-UI-02513-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Definition of Misconduct

STATEMENT OF THE CASE:

On January 2, 2021, the claimant, Kathleen S. Smith, filed an appeal from the December 23, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for sleeping on the job. The parties were properly notified of the hearing. A telephonic hearing was held on Friday, March 5, 2021. The claimant, Kathleen S. Smith, participated. The employer, Link Associates, participated through Derek Steenhoek, Residential Administrator; Trish Robinson, Residential Supervisor; and Jay Bruns, Corporate Operations Director. Employer's Exhibits 1A through 4B were received and admitted into the record without objection.

ISSUE:

Was claimant Kathleen Smith discharged from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a residential administrative specialist, from April 29, 2002, until September 9, 2020, when she was discharged for sleeping on the job and falsifying client service documentation.

The employer, Link Associates, provides direct services to dependent adults with intellectual disabilities. Claimant has held several roles with the employer. In one of her prior roles, she was involved in discharging employees for sleeping on the job.

On September 2, 2020, claimant was working with a particular client ("Client"). At 9:06 a.m., Client called Robinson to ask where claimant was, as she had not yet arrived at his home. Later that morning, Client called Robinson and was frustrated because he wanted to come pick up his checks from the employer's office but claimant was sleeping. Robinson instructed Client to wake up claimant immediately. Approximately one half-hour later, claimant reached out to Robinson to ask if she had to bring Client in to get his checks, as she already had to come into the office after work and did not want to have to make two trips there. Robinson encouraged

claimant to bring Client in to get his checks that day, as that was his normal routine and otherwise, he would not be able to get them for several more days. (Exhibit 1A)

At 3:13 p.m. on September 2, claimant submitted her client service documentation that is used by the employer to bill Medicaid for services provided. (Exhibits 3A-3C) This documentation does not reflect that claimant arrived late to Client's home or that she fell asleep while providing services to Client.

Robinson, Steenhoek, and Bruns have all spoken with claimant regarding the incidents on September 2, 2020. Claimant denies that she arrived to work late. She claims that she arrived at 8:56 a.m., clocked in from her car, and was looking for the paperwork for Client's medical appointment when he called Robinson that morning. She also denies falling asleep that morning, and she does not know why Client would say that she had fallen asleep. Claimant was aware that her job would be in immediate jeopardy for sleeping on the job or for fraudulently completing client service documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, the employer presented substantial and credible evidence that claimant was discharged for falling asleep while serving a dependent adult and then falsified Medicaid documentation regarding the services she provided. Sleeping on the job is theft of company time under ordinary circumstances. In these particular circumstances, sleeping on the job jeopardized the health and welfare of another human being. Claimant then lied about having fallen asleep while working when she claimed to have provided continuous services when she completed her billing documentation. The combination of theft of company time, disregard of responsibility, and dishonesty combined amount to disqualifying misconduct even without prior warning. Benefits are withheld.

DECISION:

The December 23, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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March 12, 2021
Decision Dated and Mailed

lj/mh