

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FLOANNA J TEMPLE
Claimant

APPEAL NO. 14A-UI-08257-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/13/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 31, 2014, reference 01, that concluded she was discharged for work-connected misconduct. An in-person hearing was held on September 2, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Tron Dandy participated in the hearing by phone on behalf of the employer with a witness, James Alexander. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant from February 11, 2014, to July 8, 2014. She was informed and understood that under the employer's work rules, sleeping while on duty subjected an employee to immediate suspension pending investigation and/or termination.

The claimant had prescribed muscle relaxant medication for back pain. A listed side effect for the medication was drowsiness. She took the medication before reporting to work at 6:00 a.m. on July 3, 2014. Around 8:45 a.m., the claimant was given the responsibility of feeding residents in the dining hall. The job requires CNAs to be alert because of the risk that a resident might choke and the CNA might be required to handle such a situation. Tron Dandy is the administrator.

The social services director, James Alexander, entered the dining hall and noticed that the claimant was seated at the table with a resident who was crying at his dinner plate and struggling to eat. The claimant had her head down on her folded arms with her eyes closed. Alexander reassured the resident that someone would be right back. He was standing right next to the table, but the claimant did not move.

Alexander reported what had happened to Dandy. Dandy walked over to the dining room and witnessed the claimant lift her head up from her folded arms, provide a bite of food to a resident, stretch and yawn, and lay her head back down on her arms with her eyes closed. The assistant director of nursing had to tap the claimant's hand to get her to wake up.

When Dandy later met with the claimant and asked why she was sleeping, the claimant mentioned that her back was hurting so she took some medication. She was suspended pending investigation on July 3 and discharged on July 8, 2014, for sleeping on duty.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant asserted that she was not sleeping and no one woke her up. I believe the testimony of Alexander and Dandy on this point. The claimant put the resident at risk by sleeping at the table. She should have alerted a staff member about her issue with drowsiness. The fact that she gave a resident a bite of food and then put her head back down is evidence that this was more than negligence, but in fact was a violation of a known work rule and was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 31, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css