

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER JOHNSON
Claimant

APPEAL NO: 10A-UI-07107-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 03-28-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 6, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2010. The claimant participated in the hearing. Diane Schaffner, Administrator and Christina James, Assistant DON, participated in the hearing on behalf of the employer. Employer's Exhibit One through Five 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 DON for HCM Inc. from June 16, 2009 to April 13, 2010. The claimant worked the day shift April 8, 2010, and when a CNA called in to say she would not be in to work the 10:00 p.m. to 6:00 a.m. shift the claimant was responsible for covering that shift herself as well. Administrator Diane Schaffner said she was sorry and the claimant said that it was okay but asked if she could have the following Monday off and Ms. Schaffner approved her request. When Ms. Schaffner reported for work Monday, April 12, 2010, she was told the claimant worked the CNA shift well for the first one and one-half hours but after that she worked at the nurses' station and in her office rather than on the floor and during that time one resident fell and suffered a head injury. At approximately 3:00 a.m. the claimant told the charge nurse she had called the first shift nurse in one hour early and she was going to put her feet up and rest and they should wake her when the first shift nurse arrived so the claimant could go home and she proceeded to sleep until awakened at 5:00 a.m. The employer suspended the claimant April 12, 2010, until a decision on her future employment could be made by the human resources department (Employer's Exhibit One). Sleeping on the job is a Class One violation and results in immediate termination according to the employer's handbook. Third shift CNAs are expected to work and be on their feet during their entire shift, with the exception of breaks and lunch, and are required to perform cleaning tasks in addition to taking care of residents. The employer terminated the claimant's employment April 13, 2010, for sleeping on the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

As the DON the claimant knew or should have known that sleeping on the job was unacceptable and left the employer short-staffed. Additionally, she admitted to the employer that the way she behaved working as a third shift CNA was not the way she would expect a CNA working for her to behave. Not only did she sleep for approximately two hours during her shift but she also sat at the nurses' station and in her office doing paperwork rather than perform the duties of a third shift CNA. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The May 6, 2010, reference 01, decision is affirmed. The 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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