

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN D ROSS

Claimant

APPEAL NO: 09A-UI-14708-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC

Employer

OC: 08/23/09

Claimant: Appellant (2)

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 September 28, 2009, reference 02 that held he was discharged for misconduct on August 28, 2009, and benefits are denied. A telephone hearing was held on October 29, 2009. The claimant participated. Sheryl Heyenga, Program Director, and Linda Woepse, Staff Development Specialist, participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on July 24, 2008, as direct support staff, and last worked for the employer at Burlinghouse on August 25, 2009. The claimant was discharged on August 28 for sleeping on the job. The claimant received the policies of the employer that provide sleeping on the job is a dismissible offense.

Although the claimant had received written warnings for attendance issues, the employer did not consider this discipline when discharging the claimant. The claimant admits that he became ill during the early morning hours of August 25, but he denied sleeping.

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 failed to establish that the claimant was discharged for misconduct in connection with employment on August 28, 2009, for sleeping on the job.

The employer did not offer testimony of any of the three witnesses who reported the claimant was sleeping on the job, and the claimant denies having done so. The employer had the power to offer such evidence, and its failure to do so may be inferred against it. Crosser v. IDPS, 240 NW2d 682 (Iowa 1976). Generally, a single incident of sleeping on the job does not constitute job disqualifying misconduct. Hurtado v. IDJS, 393 NW2d 309 (Iowa 1986).

DECISION:

The department decision dated September 28, 2009, reference 02 is reversed. The claimant was not discharged for misconduct on August 28, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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