

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCHELLA MORROW
Claimant

APPEAL NO. 09A-UI-10263-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

**Original Claim: 06/07/09
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 10, 2009, reference 01, that held the claimant was discharged for misconduct for sleeping on the job on May 31, 2009, and that denied benefits. A telephone hearing was held on August 4, 2009. The claimant participated. Mona Dowait, Assistant Director of Support Services, and Mary Lerch, Supervisor, 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 December 15, 2007, as a full-time counselor, and last worked for the employer on May 31, 2009. The claimant was discharged for sleeping on the job in direct violation of the failure-to-supervise provision of the employer policy. The policy provides that a first-offense violation may cause termination from employment.

The claimant was working an overnight shift, 11 p.m. to 7 a.m., when she was observed by a co-worker asleep at shift change. The co-worker reported to Supervisor Lerch that he had to shake the claimant to waken her. When Lerch confronted the claimant about the incident, she admitted that she had nodded-off, and she expected to be terminated. After a brief review, the claimant was notified of the discharge on June 2; and she chose not to appeal her termination, which is allowed by employer policy. The claimant admitted in this hearing to being asleep anywhere from five to seven minutes. The employer considers the offense to be serious, since she is the sole person who is supervising three adults who have profound developmental disabilities. The claimant had attended a meeting on May 19 where a case manager and resident-parent, in the presence of employer representatives, expressed concern about the claimant's supervision of the resident who suffered an injury on her shift.

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 established that the claimant was discharged for misconduct in connection with employment effective May 29, 2009, for violation of the employer supervision policy for sleeping on the job.

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 case, the employer had a specific policy that justifies a discharge for a first offense. The policy violation is made more serious because the claimant had been at a recent meeting where her supervision was put into question when a resident suffered an injury during her shift. In addition, the claimant is the sole supervisory person overseeing the welfare of profoundly disabled residents who cannot fend for themselves.

DECISION:

The department decision dated July 10, 2009, reference 01, is affirmed. The claimant was discharged for misconduct effective May 29, 2009. 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