

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL J DUEDE
Claimant

APPEAL NO. 13A-UI-13129-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACKERMAN INVESTMENT CO
Employer

OC: 10/27/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 21, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 17, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Brian Bocken participated in the hearing on behalf of the employer with a witness, Molly Hiscox.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a night auditor from November 9, 2004, to October 31, 2013. She was informed and understood that under the employer's work rules, she could be disciplined for misuse of company time.

On October 27, 2013, the claimant was involved in a car accident and was treated for her injury in the emergency room. She was still not feeling well so she called in sick for her October 29 shift.

The claimant was scheduled to work from 11 p.m. on October 30 to 7 a.m. on October 31. She became feeling ill around 12:30 a.m. on October 31 while she was about to start the audit. Initially she went in the lobby and sat in a chair wrapped in a blanket with her face covered for about 10 minutes. Then she lay down on a couch in the middle of the lobby for about another 35 minutes. Her eyes were closed. For part of the time, she had the blanket over her head. Several guests entered the lobby, but the claimant did not respond and stayed on the couch. Later a security guard came over to her and advised her to get up and warned her that she could be fired. The claimant told the security guard she was not concerned about that and needed some more time. The claimant got up about 5 to 10 minutes later and returned to the front desk. She did not complete the audit, and the security guard went behind the front desk to answer phones and wait on guests.

The hotel manager became concerned when she found a note left by the claimant stating she had not completed the audit. The manager reviewed the audit and noticed that nothing had been done on the audit. She reviewed surveillance video from the night before and discovered the claimant's activities as described above.

When the claimant reported to work on October 31, 2013, the hotel manager discharged her for misuse of company time based on her lying down on the couch for 35 minutes and not attending to her work. The claimant had called the hotel manager during the overnight shift in the past with questions and had no excuse for not calling when she started feeling ill.

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 claimant's conduct 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. It was not just negligent conduct because the claimant deliberately decided to lie down on the couch in the middle of the lobby. She did not get up when the security guard urged her to get up. It was an error in judgment but not a good faith error. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 21, 2013, 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/pjs