

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLYNN B GESINK
Claimant

APPEAL NO. 07A-UI-02530-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN INC
Employer

**OC: 02/18/07 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 12, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 28, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Dennis Sassman participated in the hearing on behalf of the employer with a witness, Amy Davis. Exhibits One and A were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as an overnight instructor for the employer from August 27, 1985, to February 12, 2007. The claimant was informed and understood that under the employer's policies to assure the safety of the residents, sleeping on the job was prohibited and overnight staff members were required to perform hourly bed checks on each resident and record the fact the bed check was done on a bed check sheet. This was communicated in a January 11, 2007, meeting that the claimant and other staff attended, which was held because the facility had been cited during a department of inspections and appeals inspection for not protecting the safety of residents.

On January 27, 2007, the claimant was warned by a supervisor after she failed to fill out the hourly bed check sheet. She received a formal warning about this on January 29, 2007, in which she was informed that failure to complete bed checks and record them every hour could result in her termination. On February 2, 2007, the claimant had not properly recorded any of the hourly bed checks during her shift. On February 5, she was informed that it would be her last warning regarding this infraction.

On February 10, the claimant performed bed checks and recorded them through 3:00 a.m. The claimant did not perform or record the bed check for 4:00 a.m. or 5:00 a.m. When a supervisor came in at 5:00 a.m., she found the claimant sleeping in the lounge.

The claimant was discharged on February 12, 2007, for violating the employer's policies against sleeping on the job and conducting and documenting hourly bed checks.

The claimant filed for and received a total of \$280.00 in unemployment insurance benefits for the weeks between March 11 and March 24, 2007.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule 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. The claimant had been warned repeatedly and had to understand that the only acceptable way of documenting bed checks was to do it every hour. The evidence is clear that the claimant did not conduct or document the bed check at 4:00 a.m. and was asleep in the lounge at 5:00 a.m. when the supervisor came in. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$280.00 in benefits.

DECISION:

The unemployment insurance decision dated March 12, 2007, reference 01, is reversed. 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. The claimant was overpaid \$280.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs