

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA S LINK
Claimant

APPEAL NO. 08A-UI-01611-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

**OC: 01/20/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 7, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on March 6, 2008. The claimant participated. The employer participated by Darlene Brown, Autam Olson, Kini Epler, Heidi Maddox, and Bonny Abbott. Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct and whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 1997 until January 16, 2008, when she was discharged from employment. Ms. Link was employed as a full-time direct support worker working with mentally handicapped individuals. On January 11, 2008, the claimant appeared to be dozing off while watching television with residents and other staff members. Staff members attempted to have the claimant perform other duties, but the claimant declined to do so, believing that she had a required duty to perform a short time later. The claimant was not aware that she had fallen asleep.

After reviewing the incident, the claimant's immediate supervisor specifically indicated that the claimant's conduct did not warrant discharge and that the claimant would only receive a warning from the company. The claimant and the employer agreed that this would be the disciplinary action for the incident in question. Subsequently, upper management reviewed the matter and three days later discharged the claimant from employment. No intervening act took place in which it was alleged that the claimant had violated company policies or procedures.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant's discharge did not take place due to a current act of intentional disqualifying misconduct.

The evidence establishes that Ms. Link was not aware that she was dozing off while watching television with residents and other staff members. The claimant did not follow a suggestion that she perform other duties as she believed that she was going to be required to perform a necessary function a short time later and wished to remain available to perform that work. The evidence further establishes that the claimant's immediate supervisor reviewed the incident and made a specific determination and agreement with the claimant that the conduct in question should only warrant a warning. Although the claimant was warned and agreed to the disciplinary warning, she was nevertheless discharged three days later although no intervening act took place.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

While the decision to terminate Ms. Link may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant was not discharged for intentional disqualifying misconduct and that no current act of misconduct took place at the time of the claimant's separation. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 7, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw