

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AISHA C WATSON
Claimant

APPEAL NO. 13A-UI-05452-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL HEART STAFFING INC
Employer

**OC: 04/14/13
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, All Heart Staffing, filed an appeal from a decision dated May 1, 2013, reference 01. The decision allowed benefits to the claimant, Aisha Watson. After due notice was issued, a hearing was held by telephone conference call on June 14, 2013. The claimant participated on her own behalf. The employer participated by CEO Joel Katcher.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Aisha Watson was employed by All Heart Staffing from May 17, 2012 until April 5, 2013 as a part-time LPN/CNA on temporary assignments. She had been given a verbal warning in November 2012 when the employer received a complaint from a nursing home where Ms. Watson had been assigned. The facility asserted she had been sleeping on the job but because she denied it, the employer took no further disciplinary action.

On April 1, 2013, she assigned for an overnight shift for Client A. Before she could appear for the assignment Res Care, for whom All Heart Staffing was subcontracting this assignment, reported she was not allowed to work with this client because on September 30, 2012, she had been sleeping during her shift. When questioned Ms. Watson stated the parents had given her permission to sleep but she had not done so.

In addition to this newly discovered complaint the employer had also received complaint from two other facilities where Ms. Watson had been assigned in March 2013. These complaints covered problems such as lack of charting and inaccurate reports as well as watching a movie on her laptop during the shift. The claimant admitted only to the latter but asserted she had been watching only during her unpaid lunch break.

CEO Joel Katcher discharged the claimant for sleeping on the job in September 2012 which is against company policy regardless of whether permission is given by the client.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any firsthand, eyewitness testimony or statements from any of the complainants. Ms. Watson has denied all wrongdoing and nothing has been presented to rebut those denials.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of May 1, 2013, reference 01, is affirmed. Aisha Watson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css