

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE E CORDARO
Claimant

APPEAL NO. 09A-UI-15579-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CIVIC CENTER OF GREATER
DES MOINES INC**
Employer

OC: 08/30/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

George Cordaro filed an appeal from a representative's decision dated October 5, 2009, reference 01, which denied benefits based on his separation from Civic Center of Greater Des Moines, Inc. After due notice was issued, a hearing was held on November 12, 2009 in Des Moines, Iowa. Mr. Cordaro participated personally and Exhibits A through D were admitted on his behalf. The employer participated by Bill McElrath, Business Director.

ISSUE:

The first issue is whether Mr. Cordaro filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether he was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Cordaro at his address of record on October 5, 2009. He received the decision, which indicated an October 15, 2009 appeal deadline. His appeal, dated October 15, was hand-delivered and is stamped as being received in the Appeals Section on October 16. Mr. Cordaro believed he delivered the appeal on October 15 but was not sure. He subsequently hand-delivered exhibits to Workforce Development at 1000 East Grand Avenue. The documents are stamped as received at the Workforce Center on November 6 and the Appeals Section on November 9.

Mr. Cordaro was employed by the Civic Center of Greater Des Moines, Inc. from December of 1994 until July 15, 2009. He worked full time as a customer service representative in the box office. He was discharged for sleeping on the job. The issue was first addressed with him in October of 2008 after he was observed sleeping in his cubicle. He received a written warning on May 22, 2009 regarding a pattern of sleeping while at work. He was notified during his performance review on May 26, 2009 that sleeping at work was not acceptable.

Mr. Cordaro was observed sleeping at work on June 1 and two times on June 2. He was given another written warning on June 8, 2009. The warning advised that he would be discharged if there were any further incidents of sleeping on the job. The decision to discharge was due to the fact that

Mr. Cordaro was observed sleeping during a staff meeting on July 15. He was discharged the same day. Sleeping on the job was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Cordaro had ten days in which to appeal the representative's October 5, 2009 decision denying benefits to him. Iowa Code section 96.6(2). His appeal and his exhibits were hand-delivered to Workforce Development. Although his exhibits were received by the agency on November 6 they were not received in the Appeals Section until November 9. For this reason, the administrative law judge cannot be certain that the date the Appeals Section received the appeal is the actual date it was delivered to the agency. In other words, it may have been delivered to the agency before October 16 but not given to the Appeals Section until October 16. Any doubt will be resolved in Mr. Cordaro's favor.

For the above reasons, the administrative law judge concludes that the agency has jurisdiction over the issue of Mr. Cordaro's separation from the Civic Center. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Cordaro was discharged for sleeping on the job. This was not an isolated problem but one that persisted over a period of several months beginning in October of 2008. Mr. Cordaro had ample notice that his conduct was jeopardizing his continued employment but failed to take effective steps to eliminate the problem.

Whether the conduct is characterize as sleeping or as dozing, the fact remains that the employer had the right to expect that employees will not sleep while at work. Mr. Cordaro believes his medications may have caused him to sleep at work. The administrative law judge is not satisfied that the medications, which might cause drowsiness, did, in fact, cause him to sleep. Mr. Cordaro was expected to be alert not only to incoming telephone calls but also to the coworkers who needed to interact with him at work. His conduct in continuing to sleep on the job constituted a substantial disregard of the standards he knew the employer expected of him. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 5, 2009, reference 01, is hereby affirmed. Mr. Cordaro was discharged for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css