

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NYALUAK C DAK
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL 17A-UI-08114-JP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held at 3420 University Avenue, Suite A, in Waterloo, Iowa on September 19, 2017. Claimant participated. Employer participated through head of human resources Jill Grover, house supervisor Fatima Begic, and manager Lorieann Kyhl. The employer offered Employer Exhibit 1 into evidence. Claimant objected to Employer Exhibit 1 because she did not agree with Employer Exhibit 1. Claimant's objection was overruled and Employer Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a LTA (laboratory technical associate) from September 26, 2016, and was separated from employment on July 7, 2017, when she was discharged.

The employer has a written policy that prohibits employees from "Sleeping while on duty." Employer Exhibit 1. The policy provides that if an employee is caught sleeping on duty it results in automatic discharge. Employer Exhibit 1. Claimant was aware of the policy. Claimant also received training on AIDET and the 10/5 rule. AIDET requires employees to acknowledge and introduce themselves to patients, coworkers, and visitors. The 10/5 rule requires employees to acknowledge everyone that is within ten feet of them by at least non-verbal communication and by verbal communication if anyone is within five feet of them.

On June 30, 2017, while claimant was working her scheduled shift, Ms. Begic received a call from an employee that claimant was in the lab sleeping. Ms. Begic asked the employee if someone attempted to wake claimant up and the employee responded yes, but claimant did not wake up. Ms. Begic told the employee she would come down to the lab. Ms. Begic walked into the lab and found claimant at the computer area in the lab. Claimant was supposed to be

monitoring the computer screen for any new lab orders. Patients at the employer have their labs drawn 24/7. Ms. Begic observed claimant's head was down and she was sleeping. Ms. Begic had loud shoes on that made noise when she walked into the lab. Ms. Begic believes if claimant was not sleeping she would have heard her, but claimant did not acknowledge Ms. Begic when she walked into the room. Ms. Begic got next to claimant and asked if everything is ok. Claimant acted startled and responded she was tired and was resting. Claimant told Ms. Begic that she did not have anything else going on at that time and she was taking a little break. Ms. Begic told claimant she is not allowed to sleep on the job. Ms. Begic told claimant if her tasks were completed she could ask a coworker if they needed help. Ms. Begic asked claimant if she was sleeping and claimant denied that she was sleeping. Claimant then went back to work. Claimant was not on a scheduled break when Ms. Begic observed her sleeping. Claimant is an hourly employee and was still on the clock when Ms. Begic observed her sleeping. Ms. Begic then reported the incident to Ms. Kyhl. Ms. Kyhl started an investigation after she learned of the incident. Later on June 30, 2017, claimant told Ms. Kyhl that Ms. Begic came to the lab and stated she was sleeping. Claimant told Ms. Kyhl she was not sleeping. Claimant told Ms. Kyhl that her eyes were closed and she could not open them. Ms. Kyhl interviewed the employee that observed claimant sleeping. The employee confirmed that claimant was sleeping on June 30, 2017.

On July 7, 2017, Ms. Kyhl and Ms. Grover met with claimant. Ms. Kyhl and Ms. Grover explained to claimant that she was being discharged for sleeping while on duty. Claimant initially told the employer she was not sleeping on the job. Later during the meeting, claimant admitted that her eyes were closed and she could not open her eyes. Claimant later admitted to sleeping. The employer gave claimant a discharge notice and Ms. Grover covered each section with claimant. Ms. Grover asked claimant if she had any comments regarding the discharge notice and if she did she could write them on the notice. Claimant did not write any comments on the discharge notice. Employer Exhibit 1.

Claimant did not have any prior warnings for sleeping on the job. Claimant had a prior written warning on June 16, 2017 for a no-call/no-show on June 5, 2017. Employer Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence.

This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's rule prohibiting employees from sleeping while on duty is reasonable. Claimant's argument that she was not sleeping on June 30, 2017, but was merely resting is not persuasive. While the employer did not present the employee that initially reported claimant was sleeping while on duty to provide sworn testimony or submit to cross-examination, the

combination of Employer Exhibit 1 and Ms. Begic, Ms. Kyhl, and Ms. Grover's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible. Ms. Begic credibly testified that she observed claimant sleeping when she walked into the lab. Ms. Begic credibly testified that claimant's head was facing downward and not monitoring the computer screen. Ms. Begic credibly testified that claimant appeared startled when she asked if everything was ok. Ms. Kyhl credibly testified that the employee that reported the incident said claimant was sleeping. Furthermore, the administrative law judge finds the testimony that claimant admitted that her eyes were closed during the July 7, 2017 meeting with Ms. Kyhl and Ms. Grover to be credible.

The employer has presented substantial and credible evidence that on June 30, 2017, claimant was sleeping while she was on duty. Claimant's sleeping while on duty was contrary to the best interests of the employer. See *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309, 311 (Iowa 1986). Claimant's sleeping while on duty "was a willful and deliberate disregard to the standards of behavior which an employer has the right to expect from its employees[.]" *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309, 311 (Iowa 1986) ("[t]he conduct of the claimant was contrary to and not in the best interests of the employer. The claimant's actions in sleeping while on duty show a willful and deliberate disregard of the standards of behavior which an employer has the right to expect from its employees and is therefore job misconduct within the meaning of [section 96.5(2)(a)] of the Iowa Code. Misconduct was alleged by the employer as the reason for discharge and misconduct has been established by the record."). This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The August 7, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs