

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CAMMIE LANGE**  
Claimant

**IOWA WORKFORCE DEVELOPMENT**  
Employer

**CASE NO. 21IWDUI2054**

**APPEAL 21A-UI-06784**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/22/21  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 22, 2021 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2021. The claimant, Cammie Lange participated personally. The employer, Iowa Workforce Development, participated through representative Brooke Axiotis and witness, Dara Flanigan. Employer's Exhibits A through K were admitted.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as an Employer Liability Specialist. Claimant was employed from September 7, 2018, until September 27, 2019, when she was discharged from employment. Claimant's job duties included collecting on overpayments, setting up payment arrangements for overpaid debts, and getting calls regarding overpayment debt.

The employer has a written policy in place, which prohibits sleeping on the job. (Exh. E, p. 5). A copy of the written policy was given to claimant in September of 2018 when she began her employment.<sup>1</sup> (Exh. G). Claimant knew that this written policy was in place. Claimant received a one (1) day suspension on August 12, 2021, for sleeping at her desk on August 1 and 2, 2019. (Exh. A). Prior to this suspension, Dara Flanigan, the claimant's direct supervisor had emailed claimant that her coworkers had seen her sleeping on the job starting in July. (Exh. H).

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<sup>1</sup> Employer also submitted an Acknowledgment of Receipt of Work Rules signed by the Claimant in July of 2018 but did not explain the discrepancy between the Acknowledgment date and Claimant's start date.

On August 19, 2021, the claimant was given a three (3) day suspension. Claimant failed to notify her supervisor of sick leave per the employer's work rules. On September 13, 2019, claimant's supervisor, Flanigan, observed the claimant sleeping at her desk for about ten minutes until Flanigan woke her up. When claimant woke up, she was shocked and embarrassed. Claimant knew that this incident could lead to her discharge. On September 27, 2019, the claimant was discharged for sleeping at her desk on September 13, 2019, for a period of at least five minutes.<sup>2</sup> (Exh. D). Claimant also had other conduct issues such as failing to call-in as required by the work rules and using the employer's phone and computer for personal phone calls and emails.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

As a preliminary matter, I find that the Claimant was discharged from employment.

Iowa Code § 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.

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.

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<sup>2</sup> Several months after Claimant left employment with the Employer, she learned that she had a health condition that caused her to have trouble waking up and sleeping when she was at work.

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).

Iowa Admin. Code r.871-24.32(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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). As recently clarified by the Iowa Supreme Court: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 195-96 (2016); see also *Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish per se disqualification from receiving unemployment compensation).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* Further, 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant had been previously disciplined for sleeping on the job and knew that it was against the employer's policy to sleep on the job. Claimant slept on the job on September 13, 2019, in violation of employer policy despite having been previously warned and disciplined for the same reason. Additionally, sleeping on the job is generally misconduct in the absence of permission or some unavoidable circumstance. *Hurtado v. Iowa Dept. of Job Service*, 393 N.W.2d 309, 311 (Iowa 1986) (Claimant slept on job claiming he had worked long hours and not slept for medical reasons. The Court wrote "even if [Claimant]'s statement of reasons [for sleeping] was believed, ... his unilateral and undisclosed decision to rest his fatigued body at the time and place in question was, nevertheless, a willful or wanton disregard of the employer's interest.")

There is substantial evidence in the record to support the conclusion that claimant willfully and deliberately violated the employer's interests and rightful expectations that claimant would not sleep on the job in this case. Accordingly, the employer has proven claimant committed job-related misconduct.

**DECISION:**

The February 22, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Alla R. Mintzer  
Administrative Law Judge

May 6, 2021  
Decision Dated and Mailed

ARM/aa

cc: Cammie Lange, Claimant (by First Class Mail)  
Iowa Workforce Development, Employer (by First Class Mail)  
David Steen, IWD (By Email)  
Brooke Axiotis, IWD (By Email)  
Nicole Merrill, IWD (By Email)  
Joni Benson, IWD (By Email)