

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SARAH E SMITH
2722 MOYER
DES MOINES IA 50310**

**IOWA SLEEP DISORDERS CENTER PC
4080 WESTOWN PKWY
WEST DES MOINES IA 50266**

**Appeal Number: 05A-UI-04454-BT
OC: 04/03/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sara Smith (claimant) appealed an unemployment insurance decision dated April 20, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Iowa Sleep Disorders Center (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2005. The claimant participated in the hearing with Legal Assistant Teresa Jones. The employer participated through Carol Waggoner, Technical Director; Barb Zworan, Clinic Manager; Lila Leighton, Polysomnograph Technologist; Brandon

Butters, Polysomnograph Technologist; and Bridgette McLemore, Polysomnograph Technologist. Employer's Exhibits One through Six were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time polysomnography technologist from August 16, 2004 through March 31, 2005. She had 14 years of experience in polysomnography testing but a total of 26 years of experience working with patients. She was discharged for failure to follow her employer's directives in obtaining accurate study results and failure to improve her inappropriate behavior. She was advised of the problems in her evaluations on November 18, 2004 and again on March 2, 2005. There were technical problems with her sleep study tracings and her data was difficult to decipher but she did not take the necessary steps to improve her work. She also failed to improve her treatment of patients and ability to work as a team with her co-employees.

Two patients complained about the claimant's rude behavior and a written warning was issued to her on March 15, 2005. On March 28, 2005, a co-worker complained about the claimant's refusal to correct noted problems with her testing. When the co-worker pointed this out to the claimant, the claimant made a statement that she heard the "same stuff" at Mercy and "didn't seem to be concerned about the problems." After learning this information, the employer made the decision to terminate the claimant since it did not appear that she was willing to make changes even though she was capable of doing so.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). She was discharged for failure to follow her employer's directives in obtaining accurate study results and failure to improve her inappropriate behavior. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant was more than capable of accurate and professional work but failed to make any changes even after being warned repeatedly. The claimant's failure to follow directives was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 20, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/pjs