

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE M NELSON
Claimant

APPEAL NO. 06A-UI-09255-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**OC: 01/01/06 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Rose M. Nelson (claimant) appealed a representative's September 7, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Per Mar Security & Research Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant participated in the hearing with her representative, John Graupmann. Doug Kuhl and Steve Szalo appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 12, 2003. The claimant worked as a full-time security officer at various job sites. Prior to August 14, 2006, the claimant had only received a warning for an attendance issue.

In early August 2006, the claimant was involved in an accident. The claimant was in her vehicle when it ran into a parked semi-trailer. The claimant did not know how the accident occurred. The employer was very concerned about the claimant's ability to work and gave her time off to make sure this accident had not occurred as the result of a medical problem. The claimant has a chronic medical condition, but she has had this since she was a teenager. The claimant takes multiple prescribed medications every day. The claimant thought she had blacked in out in early August and has an upcoming appointment with a specialist.

After the claimant's physician gave her a release to return to work without any restrictions, the employer assigned the claimant to watch a large tent that was filled with furniture. The employer told the claimant at this time they could not continue her employment if she was unable to do her or fell asleep again. This job location did not have a restroom on site. Prior to

August 14 when the claimant had to use the restroom the employer allowed her go without permission. On August 14 the claimant's supervisor told the claimant she had to ask someone to relieve her before she could go to the restroom.

The claimant called for assistance around 11:00 p.m. on August 14. The claimant needed to use the restroom. Also, the claimant started experiencing pain that is associated with her chronic medical conditions. While the claimant waited to go to the bathroom, she experienced intense pain in her abdominal area. In an attempt to manage this pain, the claimant sat in her vehicle, massaged her abdomen, closed her eyes and attempted to do deep breathing or relaxation exercises.

Kuhl arrived at the job site 11:21 p.m. to relieve the claimant while she used the restroom. Kuhl initially believed the claimant was unconscious because she did not respond when he called her name, tapped on a window or shone a light in her face. Kuhl was about to call an ambulance when the claimant opened her eyes and responded to him. Kuhl concluded the claimant had been sleeping. The claimant denied she had been sleeping, but instead was in a state of deep relaxation. As soon the claimant opened her eyes, she drove to Wal-Mart to use the restroom.

When the employer talked to the claimant about the August 14 incident, the claimant indicated the problem may be the result of medications she took. The claimant indicated she would try harder so this would not happen again. Although the employer recalled finding the claimant asleep at work before, the employer had not documented these incidents or given the claimant any warning. The employer discharged the claimant because of continued problems concerning her ability to work and staying awake at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling reasons for discharging the claimant. Within two weeks, the claimant either blacked out or fell asleep at work. As a result of the two recent incidents, the employer concluded the claimant was no longer capable of performing her job duties. When Kuhl came to relieve the claimant, a preponderance of the evidence indicates the claimant had inadvertently fallen asleep while doing deep breathing exercises in an attempt to relieve pain

she experienced in her abdominal area. The evidence does not establish that the claimant intentionally failed to perform her job duties on August 14. The employer had compelling reasons for requiring another employee to take over while she went to the restroom. During the 20 minutes the claimant had to wait, she attempted to manage some intense pain that she did by doing deep breathing exercises. While the claimant wanted to relax, she did not intend to or plan to fall asleep which she did while waiting for Kuhl. The facts of this case do not establish that the claimant intentionally disregarded the employer's interests. Therefore, the claimant did not commit work-connected misconduct. As of August 13, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 7, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 13, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs