

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOANN MORAN
Claimant

APPEAL NO: 09A-UI-14607-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IA CORP
Employer

OC: 08/23/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

JoAnn Moran (claimant) appealed a representative's September 21, 2009 decision (reference 01) that held she was not qualified to receive benefits, and the account of Mercy Health Services – Iowa 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 27, 2009. The claimant participated in the hearing. The employer responded to the hearing notice by providing a phone number and the name of the person to contact for the employer. The employer's witness was contacted, but she was not available for the hearing. The employer's witness did not respond to the message left on her phone. No one participated in the hearing on the employer's behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 22, 2003. The claimant worked as a full-time housekeeper on the 7:00 a.m. to 3:30 p.m. shift.

Prior to August 20, 2009, the claimant's job was not in jeopardy and she did not have any warnings for sleeping at work. On August 20, the claimant went on a break from 9:15 to 9:30 a.m. At 10:15 a.m., the claimant sat down and waited to clean some rooms. The claimant inadvertently fell asleep while waiting to clean rooms. A nurse saw the claimant sleeping but did not wake up the claimant. The claimant woke up by herself at 10:45 p.m., got up and went to see what rooms needed to be cleaned.

Later on August 20, the employer discharged the claimant for taking an unscheduled break from 10:15 to 10:45 a.m. The employer told the claimant this type of behavior could not be tolerated and discharged the claimant for falling asleep at work on August 20, 2009.

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 discharged the claimant for business reasons. The August 20 isolated incident does not rise to the level of work-connected misconduct. The facts do not establish that the claimant deliberately fell asleep at work. Instead, she sat down waiting to clean another room when she inadvertently fell asleep. Since the evidence does not establish that the claimant committed work-connected misconduct, she is qualified to receive benefits as of August 23, 2009.

DECISION:

The representative's September 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not establish work-connected misconduct. As of August 23, 2009, the claimant is qualified to receive 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/css