

March 19, 1996 until September 24, 2005. She was a full-time security guard working 11:00 p.m. until 8:00 a.m.

On September 23, 2005, Supervisor Don Loudermilk reported to Human Resources Manager Andrea Karrer that he had received statements from two truck drivers which alleged Ms. Cole had been sleeping on the job on the night of September 21, 2005. Sleeping on the job is an offense which may lead to immediate discharge under the policies in the employee handbook, which Ms. Cole had received. Ms. Karrer discharged the claimant by phone on September 24, 2005, basing her decision on the fact two truck drivers had reported she was sleeping. The claimant denied sleeping on the job at any time.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer's testimony was based on a written statement from Ms. Karrer, who based her decision on reports from Supervisor Don Loudermilk who made his report based on statements from two truck drivers. The administrative law judge finds this testimony to be far too attenuated to have any evidentiary weight. The employer's witness was essentially giving third or fourth level hearsay as testimony which is not sufficient to rebut the claimant's denial of sleeping on the job. The employer has not met its burden of proof to establish the claimant was discharged for misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of October 12, 2005, reference 01, is affirmed. Linda Cole is qualified for benefits, provided she is otherwise eligible.

bgh/pjs