

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN S GLASCOCK
Claimant

APPEAL NO. 12A-UI-14283-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

**OC: 10/28/12
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Genesis Development, filed an appeal from a decision dated November 30, 2012, reference 01. The decision allowed benefits to the claimant, Jordan Glascock. After due notice was issued a hearing was held by telephone conference call on January 11, 2013. The claimant participated on his own behalf. The employer participated by Team Leader Kelly Manriques and Residential Coordinator Laura Thompson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jordan Glascock was employed by Genesis from August 30, 2010 until October 30, 2012 as a part-time community support person working 2:45 p.m. until 10:45 p.m. He had been coached on November 15, 2011, because he had been found sleeping on the job. The employer policy prohibits staff from sleeping on the job as their duties require them to oversee the safety of the disabled clients.

On March 20, 2012, he received a verbal warning for again sleeping on the job. He was advised this was a serious violation and his job was in jeopardy. On October 16, 2012, he was again found sleeping on the couch in the cottage by the night staff when it arrived. The night staff did not report the incident to Team Leader Kelly Manriques until October 29, 2012. The next day the claimant was discharged.

Mr. Glascock admitted he was sleeping on the job because he had been volunteering for a lot of extra shifts to earn more money. But his last shift had ended at 9:00 a.m. on October 15, 2012, and he did not report to work again until 2:45 p.m. on October 16, 2012. That meant he had more than 24 hours in which to rest up for his evening shift.

Jason Glascock filed a claim for unemployment benefits with an effective date of October 28, 2012. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised his job was in jeopardy as a result of sleeping on the job in violation of an essential job duty. In spite of the warning he was asleep again at the end of his evening shift. His contention he was tired from working extra shifts does not bear close scrutiny because he had been off work for more than 24 hours since his shift ended October 15, 2012, and had plenty of time to rest before returning to work the next afternoon.

The record establishes the claimant was discharged for violation of a known company rule after warnings. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of November 30, 2012, reference 01, is reversed. Jordan Glascock is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css