

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A WUCHTER
Claimant

APPEAL NO: 14A-UI-11915-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WM M CAFARO & ASSOCIATES
Employer

**OC: 10/19/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 14, 2014, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 12, 2015. The claimant participated in the hearing. Steve Then, Maintenance Supervisor, and Richard Launspach, Property Manager, participated in the hearing on behalf of the employer and were represented by Attorney Michael Wright. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time maintenance worker for Wm. M. Cafaro & Associates from September 13, 2014 to October 16, 2014. She was discharged after the employer received a report she was sleeping on the job.

The claimant worked the 11:00 p.m. to 7:00 a.m. shift. On October 11, 2014 the claimant's teammate told Maintenance Supervisor Steve Then that the claimant spent one and one-half hours sleeping in her van outside the mall they were cleaning. She also stated the claimant laid on a picnic bench and slept and did not complete her job duties. Additionally, there were previous reports that the claimant's work was inadequate.

The employer met with the claimant October 16, 2014 and notified her that her employment was terminated. The employer did not issue the claimant any verbal or written warnings about the quality of her work or sleeping on the job and did not have any video surveillance footage showing the claimant sleeping. At the time of termination, when the claimant asked why she was being discharged the employer told her it could "not get into it" and did not tell the claimant she was accused of sleeping on the job. The claimant denies sleeping during business hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the employer testified the claimant was terminated for sleeping on the job the claimant denies ever doing so. The claimant's testimony was not particularly persuasive but the teammate who made the accusation was not made available to testify for the hearing and face questioning. The claimant's first hand testimony carries more weight than the teammates

written statement. If a party has the power to produce more explicit evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W 2d 682 (Iowa 1976).

Although the claimant may have been sleeping on the job and performing substandard work, there is not enough evidence to conclude that anything occurred given the employer did not provide a first-hand witness to her sleeping and the employer does not have surveillance equipment that might have showed her going to her van in the parking lot and sleeping. Under these circumstances, the administrative law judge must conclude there is not enough evidence to conclude the claimant's actions constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The November 14, 2014, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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