

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE W O'DONNELL**  
Claimant

**APPEAL NO. 06A-UI-10653-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 10/01/06 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Catherine O'Donnell filed an appeal from a representative's decision dated October 24, 2006, reference 01, which denied benefits based on her separation from Mosaic. After due notice was issued, a hearing was held by telephone on December 8, 2006. Ms. O'Donnell participated personally. The employer participated by Carol Mau, Executive Director; Diane Chase, Employment Support Coordinator; Jen Zajicek, Associate Director; and Nancy Seel, Human Resources Manager. The employer was represented by Jessica Meyer of TALX Corporation. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. O'Donnell was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. O'Donnell was employed by Mosaic from November 28, 2005 until September 5, 2006 as a full-time direct support associate. On June 8, Ms. O'Donnell was given a written warning after she was observed sitting with her eyes closed. A support manager called her name but she did not respond. When her name was called a second time, she got up and resumed working. Ms. O'Donnell denied that she was sleeping. She indicated in her comments on the warning that she had her eyes closed because she was deep in thought.

The warning of June 8 advised Ms. O'Donnell that she would be discharged if there were any future incidents of sleeping or appearing to be sleeping on the job. On August 31, another individual notified Diane Chase that Ms. O'Donnell appeared to be sleeping. Ms. Chase went to the area and observed Ms. O'Donnell sitting with two clients. She had her eyes closed and her head back. When Ms. Chase called her name, she opened her eyes. Ms. O'Donnell again denied that she was sleeping. As a result of her conduct, she was notified on September 5 that she was being discharged. She asked if she could resign instead and was allowed to.

**REASONING AND CONCLUSIONS OF LAW:**

Although she submitted a resignation, it is clear that Ms. O'Donnell did not have a job to resign from, as the decision had already been made to terminate the employment relationship. Continued work would not have been available if she had not resigned. For the above reasons, the administrative law judge concludes that the separation was a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. O'Donnell was discharged for sleeping on the job. She denied that she was sleeping on either June 8 or August 31. The administrative law judge believes she was sleeping on June 8, as she did not respond until her name was called a second time. Even if she was not sleeping on that occasion, the warning of June 8 clearly put her on notice that she should not even give the appearance of sleeping while on the job. In spite of the warning, Ms. O'Donnell was again observed with her eyes closed on August 31. She had her head back and her eyes closed. It would be reasonable for anyone observing her to believe she was sleeping. There were two clients with her at the time and she could not have been attentive to them if she had her eyes closed. By her own estimate, she had her eyes closed for five to ten minutes.

The administrative law judge concludes that Ms. O'Donnell's conduct in sleeping on the job constituted a substantial disregard of the employer's standards. Her conduct continued in spite of a written warning advising her that such conduct could result in discharge. For the reasons stated herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated October 24, 2006, reference 01, is hereby affirmed as to result. Ms. O'Donnell was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw