

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDY L HACKER-BOSTER

Claimant

APPEAL NO: 14A-UI-11654-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT MEDICAL CORPORATION

Employer

OC: 09/28/14

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 29, 2014 determination (reference 01) that held the claimant qualified to receive benefits because she had been discharged for nondisqualifying reasons. The claimant participated at the December 2 hearing. Anthony Borich, the human resource coordinator, and Nicole Killam, the chief nursing officer, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant in April 2014 to work full time as monitor technician. Prior to July 8, 2014, the claimant's job was not in jeopardy.

On July 8, the claimant started working at 7 a.m. Between 10 and 11 a.m. Killam was behind the claimant and saw her with her head down. Killam concluded the claimant was snoring. After two to three seconds, Killam called out the claimant's name. The claimant raised her head. In response to Killam's question, she told Killam was not sleeping.

The employer talked to the claimant on July 8, 2014. During this conversation, the claimant told the employer she had a cold and Killam heard hers breathing loudly. The claimant denied she had been asleep or had been snoring. The claimant also reported she had taken some cold medicine the night before. The employer indicated they had to investigate this incident, but the claimant should not worry. The claimant completed her 12-hour shift on July 8.

After the employer contacted the corporate office, management concluded they had enough evidence to discharge the claimant for sleeping on the job. The employer's policy informs employees they can be disciplined, which could include termination, if they sleep on the job. The employer discharged the claimant on July 9 for sleeping on the job.

The claimant established a claim for benefits during the week of September 28, 2014. The employer is not one of her base period employers.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On July 8 Killam was behind the claimant and did not see her face, but concluded the claimant was sleeping after observing her for a couple of seconds. The claimant denied she was sleeping or that she was snoring. While the claimant had a great deal of responsibility to keep patients safe, the evidence does not establish that she was actually sleeping at work. Even if she had dozed off, the evidence does not establish that she intentionally disregarded the employer's standards. This isolated incident does not rise to the level of work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits.

During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's October 29, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css