

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN K KNIGHT**  
Claimant

**APPEAL NO. 07A-UI-09852-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCM INC**  
Employer

**OC: 09/30/07 R: 01  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

HCM, Inc. filed an appeal from a representative's decision dated October 19, 2007, reference 01, which held that no disqualification would be imposed regarding Susan Knight's separation from employment. After due notice was issued, a hearing was held by telephone on November 6, 2007. Ms. Knight participated personally. The employer participated by Steve Fitzgerald, Administrator; Dawn Berrier, Director of Nursing; and by Amanda Fryar, Nancy Kuehl, and Nancy Jors, Certified Nursing Assistants. Exhibits One through Five were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Knight 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. Knight was employed by HCM, Inc. from January 12, 2004 until September 17, 2007 as a registered nurse. She was last employed part-time and worked approximately 24 hours each week during the night shift. She was discharged based on allegations that she was sleeping on the job, watching television when she should have been working, and stealing food from the facility.

On September 17, a CNA reported that Ms. Knight had slept during her shift and had also prepared food for herself from the facility kitchen on September 14. The employer spoke with other CNA's, who confirmed that Ms. Knight did spend time during her shift sitting in the recliner in front of the television. At least one CNA reported having seen Ms. Knight get food from the facility kitchen. As a result of these reports, Ms. Knight was discharged on September 17, 2007.

Ms. Knight had advised the director of nursing that she would be performing some of her paperwork while seated in the recliner because it was easier on her back. She had undergone back surgery in the past. She also sometimes sat in the recliner with an ice pack on her back if

she was having pain. Ms. Knight was always available to perform the change-of-shift reports and to perform the narcotics count. She was the only staff member assigned to dispense medications during her shift and she passed them as scheduled. She also performed all of the necessary assessments required by her position. There were occasions on which treatments were missed by Ms. Knight but the director of nursing did not feel the isolated instances warranted disciplinary action. On the whole, there were no complaints that Ms. Knight was not performing her duties or that she was not available when staff needed her.

The employer's kitchen is locked at 6:00 p.m. when the kitchen staff leaves. Only the nurses have a key to the kitchen. The food in the kitchen is the property of the employer. If there are special events, food may be left out for staff to partake of. However, such items are left in the break room and not the kitchen because staff would not have access to the kitchen after 6:00 p.m. There was no food left out for staff on September 14.

Ms. Knight filed a claim for job insurance benefits effective September 30, 2007. She has received a total of \$500.00 in benefits since filing her claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

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). Part of the reason for Ms. Knight's discharge was the allegation that she was sleeping on the job and spending a substantial portion of her shift watching television. None of the employer witnesses were able to confirm that Ms. Knight was actually sleeping rather than simply sitting with her eyes closed. She does not dispute that she spent time sitting in the recliner either doing paperwork or resting on an ice pack. Watching the television was only incidental to those activities. The employer did not seriously contest her contention that she had told the director of nursing that she needed to sit on occasion because of her back. The administrative law judge cannot find that she was sitting down for the purpose of watching television. Nor can the administrative law judge find that she was sitting to the extent indicated by the employer. If she was sitting to the extent indicated by the employer, one would expect more of her duties to go undone. However, she attended the change-of-shift meetings and was present for the narcotic counts. She also performed the necessary assessments and other paperwork required by her position.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Ms. Knight was sleeping on the job or being inattentive to her duties by watching television when she should have been working. However, the evidence does establish that she removed food from the facility kitchen to eat. She knew or should have known that the food in the kitchen was intended for residents and not staff. She did not deny that she prepared herself a plate of food on September 14, she indicated she did not recall. Certainly she would recall whether she ate food from the kitchen. If she had never eaten food from the kitchen, it seems her response would be a blanket denial. At least two witnesses confirmed that she had removed food from the facility kitchen for herself on occasion. Her actions constituted theft, which is clearly contrary to the type of behavior an employer has the right to expect. An individual should know, without benefit of prior warnings, that taking items from one's employer without permission is contrary to that employer's expectations.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Knight's theft of food belonging to the employer constituted misconduct within the meaning of the law. Therefore, benefits are denied. Ms. Knight has

received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated October 19, 2007, reference 01, is hereby reversed. Ms. Knight 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. Ms. Knight has been overpaid \$500.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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