

residential group homes for mentally and physically challenged children and adults. Ms. Hunt was assigned to a residential group home in which eight severely or profoundly mentally retarded adults resided. Some of the residents in the group home are medically fragile, e.g. suffer from seizure disorders, and require close supervision. The employer required employees to remain awake and alert, and to check on the residents every 15 minutes. To check on the residents, Ms. Hunt was expected to go into the resident's room and ascertain that they were breathing normally and otherwise safe.

Because of the need to closely supervise the residents, the employer has a written policy that prohibits employees from sleeping on the job. This prohibition applies to all shifts. The employer reinforced the policy against sleeping on the job and the policy regarding closely monitoring through regular staff meetings. Ms. Hunt took part in these meetings and was aware of both policies. The employee handbook lists sleeping on the job as misconduct that may lead to immediate termination. The employer also prohibits television watching or any other behavior that might distract an employee from closely monitoring the residents.

Ms. Hunt ordinarily worked the day shift. Ms. Hunt's employment was governed by a collective bargaining agreement and Ms. Hunt was eligible to pick up overtime hours pursuant to the agreement. Ms. Hunt picked up an overnight shift that started at 12:30 a.m. on August 27. Ms. Hunt would then have to work her regular day shift, which was scheduled to end at 4:00 p.m. Ms. Hunt was the only staff member on duty during the overnight shift. Despite being aware that she would need to work 15.5 consecutive hours, beginning with an overnight shift, Ms. Hunt had been awake since 8:00 a.m. on August 26. At the end of her scheduled shift on August 27, Ms. Hunt would have been awake for 32 hours.

The final incident that prompted the discharge occurred on the morning of August 27. At approximately 6:50 a.m., Residence Supervisor Amy Van Voorst arrived at the group home and found Ms. Hunt asleep in a chair in the living room. Ms. Hunt was sitting sideways with her legs draped over the arm of the chair and her torso was curved in a ball. The television was on. Ms. Van Voorst had to repeatedly shake Ms. Hunt and call Ms. Hunt's name to arouse her from an apparently deep sleep. When Ms. Hunt awoke her first comment to the supervisor was "Why are you here so early?" Ms. Van Voorst reported the incident to Administrator Laura Bos. Pursuant to the employer's policy, Ms. Hunt was then sent home pending an investigation. Ms. Hunt admitted that she had been watching television and had fallen asleep. As a result of falling asleep, Ms. Hunt failed to check on the residents at 6:15, 6:30, and 6:45 a.m. Ms. Hunt had also only checked on the residents on an hourly basis throughout the night, in violation of the employer's 15-minute check policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Hunt was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Ms. Hunt intentionally violated the employer's policy against watching television on the night in question. The evidence further indicates that Ms. Hunt had not scheduled adequate sleep time prior to the shift, had apparently been sleeping for an extended period when she was discovered, and was fully aware that she was in violation of the employer's policy at the time she was awakened. The administrative law judge draws the reasonable inference that Ms. Hunt intended to use part of her shift for sleep, despite the safety needs of the residents and despite the employer's strong prohibition against such behavior. That Ms. Hunt was in fact sleeping on the job, and intended to sleep, is supported by Ms. Hunt's attempt at the hearing to excuse the behavior by arguing Ms. Van Voorst had slept on the job before becoming a supervisor. In light of the weight of the evidence in the record, Ms. Hunt's assertion that she was not, in fact, sleeping at work lacks credibility. The evidence in the record indicates that Ms. Hunt repeatedly admitted to sleeping on the job prior to being discharged. The administrative law judge concludes that Ms. Hunt was discharged for misconduct in connection with the employment and that the misconduct was substantial enough to disqualify Ms. Hunt for benefits.

DECISION:

The Agency representative's decision dated September 15, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant.

jt/pjs