

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA J SCHMITZ
Claimant

APPEAL NO. 10A-UI-14192-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINLEY HOSPITAL
Employer

OC: 09/12/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Finley Hospital, filed an appeal from a decision dated October 6, 2010, reference 01. The decision allowed benefits to the claimant, Sara Schmitz. After due notice was issued, a hearing was held by telephone conference call on December 1, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Director Cheryl Haggerty and Human Resources Director Karla Waldbillig.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Sara Schmitz was employed by Finley Hospital from January 5, 2009 until September 14, 2010 as a full-time patient care technician. At the time of hire, she received a copy of the employer's policies and disciplinary procedures as well as an orientation. One policy advises employees they are subject to immediate discharge for sleeping while on duty.

Ms. Schmitz received a written warning April 26, 2010, for unauthorized use of the employer's internet for personal business. On September 5, 2010, Director Cheryl Haggerty received a report from a visitor and two staff members that the claimant had been seen sleeping at the nurses station around 2:00 a.m. She had her feet on the desk, her eyes were closed and she was "unresponsive." Ms. Haggerty began an investigation, and during that time she also received a report the claimant had again been on the company internet for personal business September 8 and 9, 2010, and investigated that as well.

The witnesses were questioned and verified the claimant had been sleeping. A report from the information technology department showed Ms. Schmitz had been on shopping websites September 8, and 9, 2010. Both investigations concluded and the claimant was discharged for violation of company policy September 14, 2010.

Sara Schmitz has received unemployment benefits since filing a claim with an effective date of September 11, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was discharged for violation of two known policies, sleeping on the job and continuing to use the employer's internet for personal use. This is a violation of the duties and responsibilities the employer has the right to expect of an employee who should be attending to her duties and caring for patients rather than sleeping at the nurses station or shopping on line. The employer has the obligation to provide care for its residents and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 6, 2010, reference 01, is reversed. Sara Schmitz is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw