

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSIE A JACKSON
Claimant

APPEAL NO. 10A-UI-08921-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/23/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rosie Jackson (claimant) appealed a representative's June 14, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Care Initiatives (employer) for sleeping on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 9, 2010. The claimant participated personally. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Tammy Kappel, Registered Nurse/Director of Nursing; Karen Smith, Licensed Practical Nurse/Change Nurse; and Diana Roberts, Administrator. David Mollenhoff, Human Resources Coordinator, observed the hearing. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 20, 1975, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on September 6, 2006. The claimant understood she was not to sleep while on duty or during her breaks. The employer issued the claimant a written warning and suspension on May 5, 2009, for sleeping at work. The employer issued the claimant warnings on April 4, and July 7, 2008, and February 16, 2009, for failure to follow instruction in the performance of her work.

On March 17, 2010, the claimant gathered blankets from the nurses' station and went to the family area without clocking out. A co-worker found her asleep on the couch and woke her. The employer terminated the claimant on May 20, 2010, for sleeping on the job.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes he was.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by sleeping on the job after being warned. The claimant's disregard of the employer's interests is misconduct. As such, she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 14, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw