

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIN K BUCHANAN
Claimant

APPEAL NO. 13A-UI-11114-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 09/01/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer participation at Fact Finding

STATEMENT OF THE CASE:

Genesis Development (employer) appealed a representative's September 25, 2013, decision (reference 02) that concluded Kristin Buchanan (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 24, 2013. The claimant participated personally. The employer participated by Kyle Bloom, Employment Services Director; Michele Butler, Assistant Supervisor; and Trista Humble, Discovery Supervisor. 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 considered all of the evidence in the record, finds that: The claimant was hired on February 23, 2010, as a full-time discovery aide. The claimant signed for receipt of the employer's handbook. The employer had problems with workers falling asleep at work. The claimant fell asleep at work three times. On August 5, 2013, the employer told all employees at a meeting they would be terminated if they fell asleep at work in the future. The claimant made a comment at the meeting that she knew she had fallen asleep at work before.

On August 27, 2013, an employee told the assistant supervisor that the claimant was asleep. The assistant supervisor observed the claimant sleeping for 30 seconds before calling the discovery supervisor. The claimant was supposed to be working one on one with a patient. The discovery supervisor arrived 60 seconds later and the claimant was still sleeping. The discovery supervisor observed the claimant sleeping for 45 seconds before reporting the incident to the human resources department. The claimant woke up while the incident was being reported. At the end of the day the employer terminated the claimant for sleeping at work. After the termination, the claimant texted the employer she knew the policy and she was wrong.

The claimant filed for unemployment insurance benefits with an effective date of September 1, 2013. She received \$928.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on September 24, 2013, by Trista Humble.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met:

(1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

DECISION:

The representative's September 25, 2013, decision (reference 02) is reversed. 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. The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs