

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W BRITTON
Claimant

APPEAL NO. 09A-UI-18289-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLSWORTH MUNICIPAL HOSPITAL
Employer

OC: 11-01-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 14, 2010. The claimant did participate. The employer did participate through (representative) Cheri Geitz, Human Resources Director and Susan Copp, Clinical Director of Medical/Surgical and Respiratory Therapy. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a respiratory therapist full time beginning April 12, 1999 through October 29, 2009 when he was discharged.

On October 28, 2009 Rhonda Ostheimer knocked on the claimant's office door and got no response. The lights were off in his office. Ms. Ostheimer called out the claimant's name and entered his office. She saw the claimant with his feet up on his desk, his eyes closed and determined that he was sleeping. Ms. Ostheimer called his name and the claimant woke up. Later that same day Ms. Copp spoke to the claimant and asked him if he had been sleeping. The claimant denied sleeping on the job but did not tell Ms. Copp that he was on a break at the time Ms. Ostheimer found him.

In the middle of September 2009 the claimant was found in the same office, with the lights off, his feet up on the desk and his eyes closed by another employee, Jane Hensing. Ms. Hensing had to call the claimant's name to awaken him. Ms. Hensing reported that she had seen the claimant sleeping on the job and Ms. Copp investigated. Ms. Copp verbally warned the claimant that he should not be sleeping on the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Sleeping on the job on two occasions, one year apart can constitute job misconduct. Hurtado v. IDJS, 393 N.W.2d 309 (Iowa 1986).

The administrative law judge is persuaded that the claimant was sleeping on the job on October 28, 2009. There is no reason for Ms. Ostheimer to fabricate the event. Additionally, the circumstances are very similar to what Ms. Hensing witnessed just a few weeks prior. The claimant had been warned previously that sleeping on the job was not allowed. The claimant's sleeping on the job is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 23, 2009, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs