

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA A DECKER**

Claimant

**DEVELOPMENTAL SERVICES OF IOWA**

Employer

**APPEAL NO: 09A-UI-09849-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated June 29, 2009, reference 01, that held the claimant was not discharged for misconduct on May 29, 2009, and benefits are allowed. A telephone hearing was held on July 27, 2009. The claimant participated. Kolby Schneider, HR Manager, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on August 27, 2008, as a direct support professional, and last worked for the employer on May 29, 2009. The claimant was discharged by her supervisor for sleeping on the job. The claimant denied that she fell asleep while working at any time during the last ten days of employment.

**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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 29, 2009.

The employer did not offer the claimant's supervisor or any written statement from the supervisor regarding his observations of the claimant sleeping on the job. The employer had the power to offer such evidence, and its failure to do so may be inferred against it. Crosser v. IDPS, 240 NW2d 682 (Iowa 1976). Generally, a single incident of sleeping on the job does not constitute job disqualifying misconduct. Hurtado v. IDJS, 393 NW2d 309 (Iowa 1986).

**DECISION:**

The department decision dated June 29, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on May 29, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs