**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHY ROBINSON**
Claimant

**OTTUMWA COMMUNITY SCHOOL DISTRICT**
Employer

**APPEAL NO: 16A-UI-05215-JE-T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 04/03/16**
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 28, 2016, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 20, 2016. The claimant participated in the hearing with Attorney John Maschman. Erick Sundermeyer, Associate Superintendent and Jeff Hendred, Elementary School Principal, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time teacher associate for Ottumwa Community School District from September 9, 2015 to April 7, 2016. The claimant was hired as a part-time food service worker and was then hired as a part-time teacher associate March 1, 2016. She was scheduled to work from 9:00 a.m. to 2:30 p.m.

On April 6, 2016, the students were taking the Iowa Test Assessments. The claimant was responsible for supervising two 4th grade boys. One of the boys went to the teacher next door and stated the claimant was sleeping and snoring. By the time the teacher arrived at the claimant's work area she was awake. The teacher reported the incident to Principal Jeff Hendred and he indicated he would speak to the claimant. The homeroom teacher also made complaints to Mr. Hendred about the claimant snacking on potato chips in front of a student, making the student, who has attention deficit disorder, unable to concentrate because he was so focused on what the claimant was eating and the fact she was "chewing in his ear." While snacks are allowed on occasion, the consumption of snacks in front of a child who is not allowed to snack at that time and chewing in his ear causing the student to be distracted, is not condoned by the school district. The other complaint the homeroom teacher made concerned the claimant's argumentative nature with regard to the child she was working with. She was

repeatedly instructed to redirect the child but instead she often argued with him and went to the teacher for help. The employer wanted the children the claimant worked with as well as the claimant to be successful and had already removed one child from her care after she was in her position as a teacher associate for one week. Additionally, the employer talked to the claimant when she was acting as a food service worker about sleeping in the teacher's lounge.

After being provided with the information regarding the claimant's behavior April 6, 2016, the employer decided to terminate her employment. Mr. Hendred met with the claimant and went over an evaluation with her that stated a child reported she was sleeping and snoring on the job April 6, that she was recently snacking in front of a child, and the teacher reported she was not collaborating with her. The claimant disputed the section stating she was not collaborating with the teacher and Mr. Hendred changed that mark from "unacceptable" to "needs improvement." The claimant did not deny or dispute the other two charges regarding sleeping and snacking and Mr. Hendred notified her he was terminating her employment.

**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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant's testimony with regard to sleeping on the job was inconsistent. On some occasions she denied sleeping on the job at any time during her employment and during other portions of her testimony she acknowledged "resting her eyes" for periods of time between one second and one minute. The most telling statement she made, however was that she woke herself up snoring April 6, 2016, and was consequently awake when the teacher came to the room where the claimant was monitoring two students taking the Iowa Test Assessment. While there was much discussion of sleeping versus dozing, neither is acceptable when supervising children and the claimant knew or should have known that any type of sleeping on the job, whether it be sleeping lightly or heavily, for one minute or five minutes, cannot be tolerated by the school district. The employer talked to the claimant previously about sleeping on the job when she was working as a food service employee and was found sleeping in the teacher's lounge. Therefore, the final incident of sleeping on April 6, 2016, was not an isolated incident.

The employer also testified about the claimant snacking in front of a child with attention deficit disorder and who had trouble concentrating at a time when the child was not allowed to partake in snacking. Although the claimant admitted she had done so, the employer could not provide the date that situation occurred and therefore the administrative law judge cannot consider that incident because it is not clear if it was a current act of misconduct.

The employer also cited the claimant being argumentative with the teacher in its decision to terminate the claimant's employment. Again, no details or dates of those occurrences were provided and it cannot be determined if that was a current act of misconduct either.

Sleeping on the job on two occasions, one year apart, can constitute job misconduct. *Hurtado v.* IDJS, 393 N.W2d 309 (Iowa 1986). While the claimant's testimony was not particularly convincing, she did state she woke herself up with her snoring April 6, 2016. Whether dozing or sleeping, snoring connotes sleeping. The claimant would not have been snoring, as reported by the child who observed her and the claimant's own testimony, had she not been sleeping on the job. While in some jobs sleeping, while never acceptable, does not pose as great a safety risk as it does in this situation. The claimant was tasked with the responsibility of monitoring two fourth graders. It is fortunate that the child who reported the claimant did so and nothing regrettable happened while the claimant was sleeping.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The April 28, 2016, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs