

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIOLA M HARDY
Claimant

APPEAL NO. 10A-UI-07647-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRYSTAL PROPERTIES INC
Employer

OC: 03/14/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Viola Hardy, filed an appeal from a decision dated May 19, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 14, 2010. The claimant participated on her own behalf. The employer, Crystal Properties, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Viola Hardy was employed by Crystal Properties from November 30, 2007 until March 8, 2010 as a full-time CNA. On Friday, March 5, 2010, she worked 8:00 p.m. until she was sent home at 1:45 a.m. by the charge nurse. Ms. Hardy was on her unpaid lunch break sitting on the couch in the front lobby. She did not feel well and had her head down on her arm on the arm of the couch. The charge nurse came by and asked if she was okay and Ms. Hardy said she was not feeling well, she had an upset stomach and a headache. The charge nurse sent her home.

On Monday, March 8, 2010, the DON Shaylee called her and said she had been reported sleeping on the job and was being fired.

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 claimant was discharged because the employer believed her to have been sleeping on the job. Ms. Hardy's testimony is that she was only resting on the couch during her unpaid lunch break. The employer has failed to provide any evidence or testimony to support its contention the claimant was sleeping while on the job. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Crystal Properties has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of May 19, 2010, reference 01, is reversed. Viola Hardy is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css