

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIKA G HILDMAN  
404 N HECKART  
ALGONA IA 50511**

**APPEAL NO. 09A-UI-19212-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXCEPTIONAL OPPORTUNITIES INC  
PO BOX 99  
BURT IA 50522**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

**YOU MAY REPRESENT** yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIKA G HILDMAN**  
Claimant

**APPEAL NO. 09A-UI-19212-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXCEPTIONAL OPPORTUNITIES INC**  
Employer

**OC: 11/29/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 18, 2009, reference 01, that concluded she was discharged for work-connected misconduct . A telephone hearing was held on February 3, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Erin Schmidt participated in the hearing on behalf of the employer with a witness, Marla Schmidt. Employer's Exhibits A through P were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a direct support staff member working the overnight shift from February 14, 2006, to December 4, 2009. She was informed and understood that under the employer's work rules, sleeping while on duty was prohibited. The claimant was warned about sleeping while on duty on January 4, 2008.

The claimant was witnessed by two employees sleeping while on duty on November 30, 2009. One of the employees noticed the claimant lying down with her eyes closed. She spoke to the claimant about taking a resident to the bathroom and called her name. The claimant did not respond so the employee ended up taking the resident herself. The claimant was still lying down with her eyes closed when the employee came back. Another employee came over and after about a minute, the claimant opened her eyes and sat up as if startled.

On the morning of December 4, 2009, two employees again witnessed the claimant sleeping while on duty and reported this to management. When the claimant was confronted with the allegations of sleeping, she denied sleeping and said she closed her eyes due to problems with allergies.

The employer discharged the claimant on December 4, 2009, for sleeping while on duty.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence of several different employees who reported witnessing the claimant's sleeping on more than one night is more credible than the claimant's denial that she was sleeping.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated December 18, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs