

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA J BURTON
Claimant

APPEAL NO. 09A-UI-09508-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 05/17/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Latoya Burton filed an appeal from a representative's decision dated June 22, 2009, reference 01, which denied benefits based on her separation from Marketlink, Inc. After due notice was issued, a hearing was held by telephone on July 16, 2009. Ms. Burton participated personally and was represented by Laura Jontz, Attorney at Law. The employer participated by Carla Pearson, Human Resources Coordinator, and Louise Bradley, Assistant Manager.

ISSUE:

At issue in this matter is whether Ms. Burton was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Burton was employed by Marketlink, Inc. from January 9, 2008 until May 22, 2009 as a full-time sales consultant. She was discharged for sleeping on the job. She received a written warning on March 31, 2008 for sleeping at her workstation.

At approximately 2:00 p.m. on May 21, a coworker reported that Ms. Burton was sleeping at her desk. When the supervisor went to the desk, Ms. Burton was sitting up and denied that she had been sleeping. She was reminded that she would be discharged if she was found sleeping again. At approximately 4:00 p.m. the same day, Carla Pearson was leaving for the day when she observed Ms. Burton leaning back in her chair with her eyes closed. She observed Ms. Burton for a minute or less and then reported the matter to her supervisor, Louise Bradley. When Ms. Bradley went to Ms. Burton's station, she found that she was asleep and had to be shaken to wake up. She was discharged the next day. During the interim between the written warning in March of 2008 and the discharge, Ms. Burton had been observed sleeping on several occasions and was verbally warned each time.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Burton was discharged for sleeping on the job. She had been warned both verbally and in writing that such conduct could result in her discharge. In fact, she had been warned verbally earlier in the day on May 21 but was again observed sleeping just two hours later.

Ms. Burton denied that she was sleeping but admitted that she “dozed off.” The administrative law judge sees no appreciable difference between sleeping and dozing. She attributed her conduct to her medical condition and the medications she takes. However, there was no objective evidence presented to establish that her medications caused her to fall asleep at work. There was no objective evidence that she has a medical condition that causes her to fall asleep.

Sleeping on the job is clearly contrary to the type of behavior an employer has the right to expect. Ms. Burton had ample notice that she might be discharged if she did not correct her behavior. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative’s decision dated June 22, 2009, reference 01, is hereby affirmed. Ms. Burton was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css