

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELILAH M MOORE
Claimant

APPEAL NO. 12A-UI-03889-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

OC: 03/04/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 5, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 2, 2012. The claimant participated. Participating as a witness for the claimant was Diana Metz. The employer participated by Tom Pritchett, Tracy Liptak, Gloria Brown, and Beth Topping.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Delilah Moore was employed by Optimae Lifeservices, Inc. as a part-time community support staff person from February 2, 2007, until September 6, 2011, when she was discharged from employment. Ms. Moore was paid by the hour. Her immediate supervisor was Gloria Brown.

The claimant was discharged based upon an incident that was reported by a coworker indicating that Ms. Moore had fallen asleep while driving a company vehicle on or about September 1, 2011. It was also reported by the claimant's sister that she had found Ms. Moore "sleeping in the car." Although the claimant, when questioned, admitted that she had not been getting much sleep, she denied falling asleep while driving. The claimant had been previously warned about sleeping on the job in a warning that was issued on March 2, 2011.

Although the employer was concerned about the allegation made by the client to a coworker about Ms. Moore falling asleep while driving, the claimant's immediate supervisor, Ms. Brown, instructed the claimant to be examined by her physician. Ms. Brown stated that if the physician verified that the claimant was medically able to continue working, she could keep her job with the company. Although the claimant's doctor verified that she was medically certified to continue working, a decision was nonetheless made to terminate Ms. Moore from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter, the employer made a management decision to discharge Ms. Moore from her employment based upon the allegation made by a client to a coworker and reported by the coworker to management that Ms. Moore had fallen asleep while driving a company vehicle with a client. The claimant denied the allegation but admitted she was having difficulty with sleep. It was also reported to the employer by the claimant's sister that Ms. Moore had been found sleeping in her car. Based upon these events, the claimant's immediate supervisor instructed the claimant to be examined by her physician, stating to the claimant that she would not be discharged if her doctor found her medically able to continue to perform her work for the company. Although the claimant's physician determined that she was medically able to continue working, a decision was nonetheless made to discharge Ms. Moore from her employment.

The question before the administrative law judge is not whether the employer has a right to discharge a claimant for this reason or no reason whatsoever, but whether the discharge took place under disqualifying conditions. While the decision to terminate Ms. Moore may have been a sound decision from a management viewpoint, the evidence in the record does not show sufficient, intentional disqualifying misconduct to warrant the denial of unemployment insurance benefits.

Although hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. When confronted by the hearsay allegations brought to the attention of the employer, Ms. Moore denied the allegations and followed her supervisor's instruction to be examined and obtain a doctor's statement that she was able to continue to perform her duties. The claimant was certified as able to continue working by her doctor. However, the employer made a business decision to terminate Ms. Moore from employment. The claimant denied under oath falling asleep while operating a company vehicle and the claimant obtained the necessary doctor's certification that was requested and required by the employer. Benefits are allowed

DECISION:

The representative's decision dated April 5, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw