

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHELSEA R KRAMER
Claimant

APPEAL NO. 09A-UI-06445-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 03/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 13, 2009, reference 02, which denied benefits based upon her separation from REM Iowa Community Services, Inc. After due notice, a telephone conference hearing was scheduled for and held on May 21, 2009. The claimant participated personally. The employer participated by Mara Benjamin, Hearing Representative, and witnesses Ecelise Healzer, Lori Becker, Melinda Warren and Darla McGaffic.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a direct service provider for REM Iowa Community Services, Inc. from May 17, 2007 until March 26, 2009 when she was discharged from employment for unsatisfactory attendance and sleeping on the job. Ms. Kramer worked on a full-time basis providing care and supervision to developmentally disabled individuals in a group home. On February 13, 2009, the claimant received a final warning for attendance violations. The claimant had been absent on numerous occasions primarily for reasons related to child care or the illness of the claimant or her children. The claimant on two previous occasions had failed to report and not provided proper notification to the employer of her impending absence and had been warned that further conduct of that nature would result in increasing disciplinary action up to and including termination. The employer believed that the claimant had failed to provide proper notification for her absence on March 23, 2009 in violation of company policy and the warning that had been served upon Ms. Kramer. While the employer was in the process of making the decision of whether to terminate Ms. Kramer for her continuing failure to provide proper notification, the claimant was discovered sleeping on the job. Ms. Kramer was observed by Melinda Warren laying on a

couch during working hours on March 24, 2009. The claimant was unresponsive until she was awakened by Ms. Warren. The employer considered the claimant sleeping on the job to be a serious violation of her responsibilities towards the clients and the claimant was discharged from employment.

It is the claimant's position that she called in to report her impending absence for March 23, 2009 the previous evening. Ms. Kramer is not sure who she spoke with. It is the claimant's position that she was having a "panic attack" on March 24, 2009 at work and was merely resting on the couch until the attack subsided. The claimant denies sleeping. It is the claimant's position that she was discharged because company management was biased against her.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits. It does.

The evidence in the record establishes that the claimant had been absent from work on numerous occasions and had on two occasions failed to provide proper notice to the employer of her impending absence. Because of the claimant's poor attendance and her failure to provide proper notification, Ms. Kramer had received warnings from her employer. The claimant was issued a final warning on February 13, 2009.

The claimant failed to report for scheduled work on March 23, 2009. Although the claimant's work shift began at 2:00 p.m. in the afternoon, Ms. Kramer did not call her employer that day to report that she would be unable to report for work. Ms. Kramer maintains that she had instead called the previous evening but is unaware of who she spoke to. Ms. Kramer was not going to report for scheduled work because she had been involved in an automobile accident at approximately 4:00 a.m. Sunday morning, March 22, 2009 and did not have transportation to go to work a day and a half later. Because of the claimant's previous poor attendance and the employer's reasonable belief that Ms. Kramer had not provided notification after being warned, the employer was in the process of making a decision to terminate Ms. Kramer when she was discovered sleeping on the job during daytime hours of March 24, 2009. The claimant was observed by a unit coordinator, Ms. Warren. Ms. Kramer did not respond to Ms. Warren opening and closing doors in the room and responded only when Ms. Warren called the claimant's name to awaken her. The employer considered sleeping on the job to be a serious infraction as developmentally disabled residents were not being supervised by Ms. Kramer while she was asleep. Based upon the totality of the events, a decision was made to terminate Ms. Kramer from her employment.

Although the administrative law judge is aware it is the claimant's position that she was merely resting because of a "panic attack" and was not sleeping, the administrative law judge finds the claimant's testimony strains credibility.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof establishing the claimant was discharged for misconduct sufficient to deny unemployment insurance benefits.

DECISION:

The representative's decision dated April 13, 2009, reference 02, is affirmed. The claimant is disqualified and benefits are withheld until she has earned ten times her weekly benefit, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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