

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER BAKER**  
Claimant

**APPEAL NO: 16A-UI-06909-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAHASKA COUNTY YMCA**  
Employer

**OC: 05/22/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 10, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 22, 2016. The claimant participated in the hearing. Chris Schippers, Human Resources Assistant and Kathy Chamra, Child Care Director, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead teacher in the infant room for Mahaska County YMCA from August 27, 2007 to May 25, 2016. She was discharged for falling asleep at work.

On Friday, May 20, 2016, the site supervisor at Kids Corner found the claimant asleep in a rocking chair in the infant room holding a baby in her arms with another baby at her feet in a bouncy seat between 11:15 a.m. and 11:30 a.m. The site supervisor tried to wake the claimant by tapping on her shoulder and saying her name but neither gesture woke her. The site supervisor then removed the baby from the claimant's arms at which point the claimant woke up and said she was sorry. The site supervisor asked the claimant if she needed to go home and the claimant stated she did. The claimant was absent due to illness May 23, 2016, and the employer was unable to meet with her May 24, 2016. The parties met May 25, 2016, and the employer terminated the claimant's employment for failing to supervise children in her care.

The claimant was placed on a 90-day probationary period May 3, 2013, after she fell asleep in a preschool classroom. The employer warned the claimant at that time her employment would be terminated if she fell asleep while working again.

The claimant admits she fell asleep while holding an infant in her arms sitting in a rocking chair May 20, 2016. She was diagnosed with diabetes in 2009 while pregnant with her son. She has had difficulty controlling her disease and one side effect of her diabetic episodes is falling asleep when she has trouble with her blood sugar numbers. The claimant testified she did not feel well off and on the morning of May 20, 2016, but usually “snaps out of it.” On May 20, 2016, she had a full blown episode which she likened to having a seizure. She was still recovering from the episode Monday, May 23, 2016, when she was forced to call in to work and report she was ill.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but

the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant suffered a diabetic episode May 20, 2016, and fell asleep as a result. While obviously it was important that she remain awake because she supervised infants, her actions were not deliberate. In *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), the Court concluded, "Absences due to properly reported illness cannot constitute job misconduct since they are not volitional." This case is similar to *Cosper* in that the claimant's actions May 20, 2016, were not intentional but rather can be attributed to her illness. Although this situation had occurred once previously, that incident of falling asleep at work happened in 2013, a full three years prior to the final act. The employer did inform the claimant at that time that if she fell asleep at work again her employment would be terminated. Again, however, because neither incident was purposeful or planned but occurred as a result of the claimant's illness, the administrative law judge must conclude the claimant's actions do not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The June 10, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs