

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA A JOHNSON
3129 STORY ST
AMES IA 50014

NURSEFINDERS OF DES MOINES
C/O TALK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-10790-CT
OC: 09/12/04 R: 02
Claimant: Appellant (2)

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 the **Employment Appeal Board, 4th 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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Linda Johnson filed an appeal from a representative's decision dated September 30, 2004, reference 01, which denied benefits based on her separation from Nursefinders of Des Moines. After due notice was issued, a hearing was held by telephone on October 27, 2004. Ms. Johnson participated personally. The employer participated by Sheryl Bakkie, Branch Director.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Johnson was employed by Nursefinders of Des Moines

from April 11 until June 4, 2004. The employer is a staffing agency and provides nursing staff to various facilities on an as-needed basis. Ms. Johnson was discharged for sleeping on the job. She was observed sleeping in a hallway during a scheduled break on June 4. As a result, the facility asked her to leave and reported her conduct to the employer. Ms. Johnson had received a previous warning for sleeping in a patient room when she was supposed to be monitoring the patient.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Johnson was separated from employment for any disqualifying reason. 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. Johnson was discharged because she was sleeping at work on June 4. It is true that she had been warned previously for sleeping on the job. However, the two situations were entirely different. The warning was due to the fact that she was found asleep in a patient room when she was supposed to be acting as a "sitter" for the patient. She could not have performed her job of monitoring the patient when she was asleep. The final incident involved Ms. Johnson sleeping during a break. The warning she had received was not sufficient to put her on notice that she could not sleep during her own time while on a scheduled break.

Ms. Johnson's conduct in sleeping during a break on June 4 represented poor judgment. However, her conduct did not evince a willful or wanton disregard of the employer's standards. She was not responsible for any patient care during the time she was sleeping as she was on a break. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated September 30, 2004, reference 01, is hereby reversed. Ms. Johnson was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs