

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARYN M PARKER
Claimant

APPEAL NO: 10A-UI-16642-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS
Employer

OC: 10/31/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 23, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Stacy Springer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2006. When the claimant became pregnant, she had problems staying awake at work especially after lunch. The employer understood the claimant did not have her usual energy and asked if she wanted her hours reduced. The claimant did not want her hours reduced and continued working full time.

On October 20, the employer gave the claimant a final warning for sleeping at work. The employer warned the claimant she could be discharged if the employer found her sleeping on the job again. On October 31, two lead employees saw the claimant sleeping at her desk shortly after 1 p.m. The employees reported this observation to Springer. Before the employer sent the claimant home early that day, the claimant recognized that she had been dozing at her desk. On November 1, the employer discharged the claimant for again sleeping on the job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew her job was in jeopardy when she received a final written warning for sleeping on the job on October 20, 2010. Even though the employer gave the claimant an opportunity to reduce the hours she worked, the claimant concluded she could not financially afford to work fewer hours. The claimant knew that after lunch, she was especially tired. Although the employer only allowed employees so much time for a break, employees could take longer breaks, but these would be unpaid. The claimant did not take extra breaks or longer than the employer allowed all employees. On October 31, the claimant again fell asleep at work and two lead employees observed her sleeping.

Since the claimant knew her job was in jeopardy and did not take the necessary steps to stay awake at work, she committed work-connected misconduct when she fell asleep or dozed on October 31, 2010. As of October 31, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 23, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 31, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs