

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE R SILVEY BURTON
Claimant

CHRISTIAN CHURCH HOMES OF IA INC
Employer

**APPEAL 25A-UI-01116-DS
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/24
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On February 10, 2025, the claimant filed an appeal from the unemployment insurance decision dated January 30, 2025, (Reference 01) that denied benefits. The claimant requested an in-person hearing. Notice of hearing was mailed to the parties' last known addresses of record for an in-person hearing to be held on March 19, 2025 at 1:00 p.m. at the Wallace Building, 502 East 9th Street, Des Moines, Iowa. The claimant participated personally. The employer participated through Drew Maddison, Assistant Administrator. No exhibits were admitted to the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as a Community Advocate Director for this employer from August of 2023 until December 9, 2024, when she was discharged by the employer. The final incident leading to the discharge occurred on December 5, 2024. Part of the claimant's job responsibilities included organizing and coordinating resident activities. On Thursday, December 5, 2024, the claimant was responsible for administering a full day of events related to decorating the floors of the employer's facility and hosting an event with refreshments in the lower level. The claimant was absent from these events and residents and staff were unable to locate her for some time. When the claimant was found, she was asleep on a sectional couch in a common room. The employer has a work rule against sleeping on the job. Drew Maddison, Assistant Administrator, heard the claimant snoring and woke her. The claimant quickly left the area. While the event the claimant was supposed to be administering was still ongoing and the claimant would also be expected to help with cleaning up after the event, the claimant did not do this and instead left work a short time later. The claimant was then discharged from the employment on Monday, December 9, 2024.

The employer had previously warned the claimant regarding her absences from the workplace and canceling activities that she was responsible for organizing and administering. She had received verbal counseling from her supervisor, Administrator Brenda Maddison, on August 18, 2024.

In discharging the claimant from the employment, the employer also considered a similar incident the previous day, December 4, 2024, wherein the claimant was supposed to be administering a resident event but instead left the workplace and shopped. While the claimant had some responsibility for shopping for supplies for the workplace, she was out of her place of assignment by shopping during this event rather than choosing another time to do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the employment due to job-related misconduct. Benefits are denied.

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 disqualification shall continue 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

Sleeping on the job is disqualifying misconduct if it was deliberate and against company work rules. *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309, 311 (Iowa 1986).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has

made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The employer credibly testified that the claimant was observed sleeping in a common area of the workplace while she was missing from her assigned duty during her work shift. The claimant neglected that duty entirely. The claimant admitted that she willfully went to this common area and rested on the sectional couch during her work time. This Administrative Law Judge does not find credible the claimant's testimony that she had an appointment with a resident at 1:30 p.m. and was then found in the common area ten minutes later. It is notable that the claimant testified at one point that she was not sleeping at all, and later admitted that she had dozed for at least ten minutes. The employer credibly testified that the claimant was in fact found sleeping at 3:00 p.m., and that she had not assisted in the activities that she was supposed to administer that day or the day previous. The claimant's testimony that the employer knew she was sick because she had told the Administrator that she was sick two days previous to the final incident is not credible. The claimant's actions were against the employer's interests. The employer has a right to expect that the claimant would perform the duties she is assigned rather than sleeping on the job. This misconduct is substantial and disqualifying. Benefits are denied.

DECISION:

The January 30, 2025, (Reference 01) unemployment insurance decision denying benefits is AFFIRMED. The claimant was discharged from the employment for job-related misconduct. Benefits are withheld until such time the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.



David J. Steen
Administrative Law Judge

March 25, 2025
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.