

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M SNYDER
Claimant

APPEAL NO. 13A-UI-02846-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 02/03/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 28, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Brandy Weaver participated in the hearing on behalf of the employer. Exhibits 1 and 2 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as photo editor from April 4, 2011, to February 1, 2013. On January 30, an employee reported to management that the claimant was falling asleep at her desk during work hours. The operation manager viewed surveillance video of the claimant's work area and discovered the claimant sleeping at her desk more than once. The claimant had been nudged by her coworkers in the past to wake her up.

On February 1, 2013, the claimant was confronted about falling asleep at her desk and admitted she had slept at her desk on more than one occasion. The employer discharged the claimant for sleeping at her desk during work.

The claimant filed for and received a total of \$1,710.00 in unemployment insurance benefits for the weeks between February 3 and March 30, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's sleeping at work was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. She provided no excuse for her conduct other than not getting enough sleep and not being busy enough.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 28, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs