

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTI KELDGORD

Claimant

APPEAL NO. 10A-UI-14372-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HENRY COUNTY SOLDEIRS' AND

Employer

OC: 08/08/10

Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 11, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 3, 2010. The claimant participated. The claimant was represented by Patrick Brau, attorney at law. The employer participated by Ann Corrigan, vice-president patient services; Shayla Malone, nursing supervisor; and Jim Carson, director of human resources. The record consists of the testimony of Shayla Malone; the testimony of Ann Corrigan; and the testimony of Marti Keldgord.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is Henry County Health Center located in Mt. Pleasant, Iowa. The claimant was hired on May 19, 2003, as a registered nurse. She worked in the obstetrics department. Her duties included assisting in labor/delivery; care of newborns; and post-partum care for mothers. Her last day of actual work was August 3, 2010. She was terminated on August 5, 2010.

The incident that led to the claimant's termination occurred on July 26, 2010. The claimant had taken a newborn infant into one of the post-partum patient rooms. The baby was fussy and the claimant used the rocking chair in the room to rock the infant and watch television. The baby fell asleep and the claimant put the baby back in his bassinet. She then got on the patient bed in the room, put a blanket over her shoulders, and fell asleep.

The baby's mother wanted her baby and she discovered the claimant sleeping. The baby then fussed and the claimant woke up. Her personal cell phone also started ringing. The baby's mother reported the incident to the nursing supervisor, as did the physician. Ms. Malone spoke to the claimant and she admitted that she had been sleeping. Ann Corrigan, vice president for

patient services, was informed. The decision was made to suspend the claimant for two days. Sleeping on the job is prohibited by employer policies. The claimant knew that sleeping on the job was prohibited.

Rob Gardner, the chief executive officer, was gone from the hospital when this event occurred. When he returned and was informed about the situation, the decision was made to terminate the claimant due to the serious nature of the offense.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In this case, the employer is a health care provider. An employer can reasonably expect that its employees, who are entrusted with the safety of patients, will not sleep on the job. The employer has the burden of proof to establish misconduct.

The evidence is uncontroverted that the claimant fell asleep on the job on July 26, 2010. She took an infant into an empty patient's room and after putting the baby to sleep, she laid down on a bed with a blanket over her shoulders and fell asleep. The claimant testified that she fell asleep by accident. She said she had been ill. The difficulty with this explanation is that the

claimant put herself in a position where falling asleep was a distinct possibility. She chose to lie down on a patient bed and cover herself, knowing that she was not feeling well. She did this with a sleeping infant beside her in a bassinette. Her actions potentially jeopardized the safety of her patients, including the baby.

The administrative law judge concludes that the claimant materially breach her duties to her employer. She was responsible for the care and safety of her patients. Although she may not have intended to fall asleep for what she estimated to be 20 minutes, she violated hospital protocol by taking an infant into a patient room and then laying down on the bed. Misconduct has been established. Benefits are denied.

DECISION:

The representative's decision dated October 11, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw