

Misconduct: Caregiver Fired For Sleeping While On Duty, Medication Use No Defense.

The aide admitted she believed that drowsiness was a potential side-effect of the medication she was taking, yet she voluntarily took the medication during her shift without notifying anyone she was doing so.

The aide's actions cannot be excused as unintentional.

An employee is guilty of misconduct justifying termination for cause when the employee willfully and deliberately violates a work rule or employer policy, assuming the work rule or policy is reasonable and that the violation causes harm or was repeated by the employee despite previous warnings.

The aide was assigned to monitor 20 to 30 skilled-care patients in the facility's day room. Her assignment absolutely required her to be awake and alert.

It was intentional misconduct for the aide to fail to ensure that she could remain awake and alert.

There is no valid comparison in a case where a secretary took medication and fell asleep in the office, as that involved no jeopardy to vulnerable individuals.

APPELLATE COURT OF ILLINOIS
November 30, 2007

A CNA had worked in the skilled nursing facility for seventeen years.

On the day in question she was assigned to monitor approximately twenty-five residents in the day room and provide assistance to them as necessary.

Earlier that day she had taken extra-strength Tylenol for a toothache. She later testified she believed that it caused drowsiness and accounted for why she fell asleep on the job.

She fell asleep for ten to twenty minutes between 4:00 p.m. and 5:00 p.m.

A visitor woke her because a resident was screaming for help. The aide's reply was that that resident did that all the time, that is, there was nothing to worry about because she was in the habit of shouting for help when nothing was actually wrong.

That remark, however, was taken by others to mean she thought it was all right to nap on the job, as even if a resident asked her for assistance there was no real reason to provide it.

Taking Medication On The Job Does Not Justify Sleeping

The Appellate Court of Illinois ruled expressly that taking medication on the job is no defense to termination for a patient-care worker sleeping on the job.

Taking a medication that causes drowsiness or which the employee believes can cause drowsiness on the job is an intentional act of misconduct.

The employee has to take sick time or at a minimum alert others that he or she is taking the medication.

Caregivers entrusted with the safety of vulnerable individuals do not come under legal case precedents that apply to other employees, like office workers.

It is true for some employees, those who are not responsible for the safety of other persons, that inadvertently falling asleep on the job after taking medication is not a firing infraction. ***Odie v. Dept. of Employment Security***, __ N.E. 2d __, 2007 WL 4233453 (Ill. App., November 30, 2007).