

## Hypothetical #1

### THE STORY HR GETS:

Jon has been a full-time Security Guard at your facility for nine years, during which time he has worked five shifts per week. Initially he worked five overnight shifts, from 10pm until 6am the following day. Unlike daytime shifts, Jon is the only employee on duty at the facility during these overnight shifts.

In September 2012, Jon brought a doctor's note saying he was being treated for fatigue and exhaustion from overwork, and that he needed temporarily reduce his schedule to three overnight shifts per week. His supervisor allowed Jon to work three overnight shifts per week for a month, after which Jon brought another doctor's note saying that his health had improved significantly from his schedule and that Jon could return to full-time work so long as he had no more than three overnight shifts per week.

After Jon's second doctor's note, Jon and his supervisor met and agreed that Jon would work three overnight shifts and two daytime shifts per week. Jon was told to report any problems with his new schedule to his supervisor, and agreed to do so. Jon has worked that schedule without incident or complaint from December 2012 until the present.

During an overnight shift last week, a delivery service driver arrived at Jon's guard shack around midnight to find Jon fast asleep in a chair—before waking Jon up, he took pictures of him sleeping. After waking up Jon allowed the driver into the facility without checking his identification or logging his delivery on the visitor log. The next day, the driver sent Jon's supervisor a complaint about Jon's behavior along with the pictures.

When Jon was interviewed by his supervisor about the complaint, he admits he must have dozed off even though he always tries to stay awake on duty. Jon said he is still under doctor's care for his exhaustion and fatigue, and that when it is vogy like it was the night of the incident he is even more fatigued. Jon says that he might need a schedule adjustment. His supervisor finds that Jon violated your company's written policy against sleeping on the job and recommends termination because Jon received a final written warning in 2013 for falsifying his time records, which said any further policy violations "will result in immediate termination."

Because Jon mentioned a schedule change and medical conditions, you and his supervisor meet with him to get more information. Jon clarifies that he actually has not visited his doctor about fatigue or exhaustion from overwork since the 2012 notes and has never sought medical advice about vogy-sensitivity; he just assumes that this is what happened. Even though he mentions working a part-time job as waiter one day a week, he denies that is contributing to his exhaustion. Jon does not mention possibly changing his schedule at this meeting, or say whether he was sure a schedule change would ensure he stays awake on duty in the future.

Jon has worked several shifts since then normally.

**Can you fire Jon at this point? Is there anything else you need to do before firing him?**

## Hypothetical #1

### JON'S STORY:

Jon thinks that the Security supervisor doesn't like him—that's why he's been stuck working overnight shifts his entire career at the company. Jon has also been waiting part-time the last nine years, he just never brought it up because it doesn't affect his work here and nobody asked.

In September 2012, went to the local clinic and told his doctor he was really tired from years of working five nights a week. The doctor gave him a note saying his exhaustion required a temporary schedule reduction to three overnight shifts per week, but advised Jon that he needed to work out a schedule with his supervisor that Jon could handle working. Jon worked three nights a week and used sick leave to take off the other two shifts he was scheduled to work, but after a month his supervisor told him his sick leave was exhausted. Jon went back to the doctor and got a note saying his improved health supported a schedule of three night shifts and two day shifts per week.

Jon met with his supervisor in December 2012 and agreed to a new schedule as recommended by his doctor. He said he would report any problems with his schedule, but instead he just took a vacation day or two any time he started to feel overly fatigued, which worked until about a month ago when the Security department instituted a vacation blackout due to staffing concerns.

Last week, Jon was sitting at his post around midnight when he felt himself dozing off; he caught himself when the driver approached. Because the Security department's normal practice is to only ID and log suspicious visitors and this was obviously a deliver driver, Jon just opened the gate and went back to work. He also started thinking about going back to his doctor and getting another note about his schedule so he could get some rest, vacation blackout or not.

Jon was surprised to see himself fast asleep in pictures the delivery driver had taken when his supervisor called him in to talk the next day. He admitted he must have dozed off but reminded his supervisor that he'd been treated by his doctor for fatigue and exhaustion back in 2012 and that he thought that's probably why he fell asleep. Because he read a blog about the harmful effects of vog the night before, Jon also mentioned that vogy weather makes him really tired, and that maybe another schedule change could help. Mainly, Jon is worried about getting in trouble again because he already has a final written warning—any new discipline means getting fired. He is not sure what, if anything, will allow him to stay awake when he is tired.

A few days later, Jon meets with HR and his supervisor about what he'd said concerning fatigue, vog, and schedule changes. When asked directly, Jon admits he actually hasn't been back to a doctor since 2012 and that he has not asked a doctor about vog. Because they don't ask, Jon doesn't mention the schedule change again but he thinks that maybe it would let him rest enough he wouldn't fall asleep again.

**As Joe, what should you do next? Is there anything you need to do to protect yourself?**