

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDSEY A WHITE**

Claimant

**APPEAL NO. 15A-UI-00373-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILLOWWIND SCHOOL**

Employer

**OC: 12/14/14**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated January 7, 2015 (reference 02) which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 5, 2015. Claimant participated. Participating on behalf of the claimant was Mr. Mike Kennedy, Attorney at Law. The employer participated by Mr. Paul Pressler, School Head.

**ISSUE:**

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Lindsey White was employed by Willowwind School from September 1, 2007 until December 15, 2014 when she was discharged from employment. Ms. White, at the time of her job separation, was employed as a co-teacher in the Montessori based school; she taught preschool aged children in association with another co-teacher. Ms. White was paid by salary; her immediate was the school head Paul Pressler.

Ms. White was discharged on December 15, 2014 based upon an incident that had taken place on Wednesday, December 10, 2015. On that morning, the parents of a prospective student for the school visited and observed the classroom where Ms. White and her co-teacher, Ms. McKaig, were teaching. During the class the parents were directing questions to Ms. McKaig for an extended period and Ms. McKaig was in turn answering questions about the school. During this time, the claimant was providing teaching to approximately half of the students and she was trying to observe the others as they engaged in self-learning. The fact that the parents had not prescheduled the visit and because the parents were directing questions to Ms. McKaig, instead of submitting them in a written form, was troubling to the claimant; as institutions more closely following the Montessori procedures did not allow these practices.

After an extended period of time, Ms. White felt it was necessary to request that Ms. McKaig focus her attention on her teaching responsibilities. At that time, the claimant was concerned because two children were pushing each other and a third was working without supervision with "glassware." Because Ms. White believed that she needed assistance in the co-teaching, she intervened in the discussion that Ms. McKaig was having with the parents and asked her co-teacher to assist with the class.

Later that day, when Ms. White reported to Mr. Pressler's office for another prescheduled meeting, she was informed that both Ms. McKaig and the parents had complained about her conduct. She was further informed by Mr. Pressler that the visiting parents had decided not to enroll at the school, causing a financial loss to the school. Ms. White was questioned about her conduct that morning, but did not satisfactorily explain what had happened, or her side of what had occurred. It had been reported that the claimant had been loud and disruptive and Mr. Pressler was aware there had been some recurring issues with the joint teaching responsibilities of Ms. White and Ms. McKaig in the past. Therefore, a decision was made to suspend Ms. White pending a final decision on her continued employment.

After considering that Ms. McKaig had been visibly upset and crying and had alleged that the claimant had verbally assailed her in the presence of the parents, and the parents had also complained about Ms. White's intervention, Mr. Pressler made a decision to terminate Ms. White from her employment. The issues between Ms. White and Ms. McKaig had been long standing and both co-teachers had been repeatedly advised that they must learn to work with each other. Mr. Pressler had previously met with both co-teachers and had them review job descriptions and agree on job duties. Between October and December 2014 Mr. Pressler had told each that they must continue to get along; however, no written warnings were given. The claimant's yearly evaluation did not reflect that her ability to work with Ms. McKaig was an issue.

It is the claimant's belief that an incident that had occurred in January 2013, where she had disagreed with Mr. Pressler's decision concerning the claimant's daughter, a student, caused Mr. Pressler to monitor the claimant more closely than other teachers. It is the claimant's further belief that the past incident may have influenced Mr. Pressler in his decision to terminate the claimant's employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is whether the evidence in the record establishes that the claimant's discharge from employment took place under disqualifying conditions. It does not.

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 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to collaborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony; providing that the direct testimony is credible and not inherently improbable.

In the case at hand, the claimant was discharged based upon an allegation of a co-teacher that Ms. White had acted inappropriately when she intervened while the co-teacher was answering questions from the parents of a prospective student. The co-teacher was crying and upset, and alleged that Ms. White had "yelled at her." The same day, Mr. Pressler also received a telephone call from the prospective clients about Ms. White's intervention while they asked

questions that morning. He was also told of their decision not to enroll their child at Willowwind School. Because of the ongoing issues between Ms. White and Ms. McKaig over their co-management of their co-teaching responsibilities, Mr. Pressler concluded that it would be in the best interests of the school to terminate Ms. White from her employment as a co-teacher.

In her sworn testimony, Ms. White denies yelling or acting inappropriately during class and supplied a reasonable explanation for requesting Ms. McKaig to assist her in the co-teaching responsibilities that morning. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge, t accords more weight to the claimant's sworn testimony than is accorded to the hearsay evidence presented about Ms. White's conduct.

The question before the administrative law judge in this case is not whether the employer made a correct business decision in terminating Ms. White from her employment but whether the claimant's discharge was for misconduct that is sufficient to warrant the denial of unemployment insurance benefits. While the decision to terminate Ms. White may have been a sound business decision, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant at the time of her termination from employment. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 7, 2015 (reference 02) is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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