

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE G CLARK
Claimant

SIoux CITY COMMUNITY SCHOOL DIST
Employer

APPEAL NO: 10A-UI-09664-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/28/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 28, 2010, reference 01, that held she was discharged for misconduct on May 11, 2010, and benefits are denied. A hearing was held in Sioux City, Iowa on September 14, 2010. The claimant, and witnesses, Toni Downing, and Melissa Martinache, participated. Attorney, Karrie Hruska, Dr. Rita Vannatta, Leeds Elementary School Principal, Jill Knuth, Assistant HR Manager, Joyce Van Waart, Office Manager, Maggie Norton, Instructor-assistant, and Jennifer Hughes, Student Parent, participated for the employer. Claimant Exhibits A & B, and Employer Exhibits 1 -21 was received as evidence..

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on December 13, 2000, and last worked for the employer as a fulltime special education teacher assistant at Leeds Elementary on May 11, 2010. The claimant worked at Leeds from the 2008/2009 school term to May 2010.

The employer issued claimant a letter of reprimand on September 11, 2009 for her tone of voice in dealing with children and her physical contact with students. The employer provided references to the board policy that claimant was expected to follow with the admonition she maintain a calm voice and demeanor. The employer included a warning that a further violation could lead to employment termination.

The employer issued a second letter of reprimand on December 14, 2009 that carried a one-day administrative leave (suspension). A student parent observed the claimant stuffing a piece of pineapple to her special needs autistic child. The parent observed the claimant using a loud tone of voice and harsh manner in dealing with students. The parent requested claimant be

removed from contact with her son. The claimant was warned about her inappropriate behavior in dealing with students, and unless she changed that behavior, she would be terminated.

Several employer witnesses heard the claimant yelling at a special needs child in the school hallway on May 10, 2010. The claimant argued with a four-year-child who wanted to be the line-leader to the point he became upset and crying. On May 11, 2010 the employer terminated the claimant's employment for the most recent incident in light of the disciplinary record, but it gave her 21-days to consider a severance package. The claimant declined. The claimant admitted in the hearing that she is loud, and for several months after the December suspension/reprimand, she tried very hard to refrain from any inappropriate behaviors.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on May 11, 2010, for a repeated violation of employer policy involving inappropriate behavior with students.

The employer issued the claimant two written warnings that her job was in jeopardy for inappropriate behavior with students. The claimant acknowledged her shortcomings by trying to refrain that she did for several months. While the claimant believes that her "loudness" is an issue of perception, her yelling at a 4-year-old special needs student on May 10 is contrary to a

standard of behavior set by employer policy for which she had been warned and it constitutes job disqualifying misconduct in light of the prior warnings.

DECISION:

The department decision dated June 28, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on May 11, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs