

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROXANNE MURFIELD
5309 HWY 75 N LOT 8
SIOUX CITY IA 51108**

**COMMUNITY ACTION AGENCY
OF SIOUXLAND
2700 LEECH AVE
SIOUX CITY IA 51106**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102**

**Appeal Number: 04A-UI-04516-A
OC: 07-06-03 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Community Action Agency of Siouxland filed a timely appeal from an unemployment insurance decision dated April 12, 2004, reference 01, which allowed benefits to Roxanne Murfield. After due notice was issued, a hearing was held in Sioux City, Iowa, September 23, 2004 with Ms. Murfield participating and being represented by Richard Sturgeon. Human Resources Director Scot Orban participated for the employer. Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Roxanne Murfield was employed as a teacher by Community Action Agency of Siouxland from September 6, 1985 until she was discharged March 9, 2004. The final incident leading to her discharge occurred on March 4, 2004. After a teacher's aide had caught a child who almost fell off the steps, Ms. Murfield said to two teacher's aides that they should have let the child fall and then filled out an incident report. This conversation was reported by the aides to management. The aides believed that Ms. Murfield was serious in her comment.

Ms. Murfield had been disciplined in February 2004 for restraining a child during discipline and then lying about the situation. In addition to a suspension she was placed on a 60-day probation. Ms. Murfield has received unemployment insurance benefits since this separation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Murfield was discharged for misconduct in connection with her work. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in this record establishes that the two teacher's aides in question reported the incident to management because they believed that Ms. Murfield's comment about letting the child fall had been made seriously. While Ms. Murfield denies that this was her intent, the evidence establishes that she did not make her intent clear at the time.

This final incident must be viewed in the context of a recent suspension for restraining a child during discipline and for making a false statement. Taken as a whole the evidence is sufficient to establish misconduct. Benefits are withheld.

Ms. Murfield has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated April 12, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$4,538.26.

tjc/tjc