

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY OLSON

Claimant

APPEAL NO: 16A-UI-07150-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST

Employer

OC: 05/22/16

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 18, 2016. The claimant participated in the hearing with witness/Special Education Associate Holly Fernandez. Rhonda Wagoner, Benefits Specialist and Nicole Lee, Executive Assistant, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eight were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time special education associate for Des Moines Independent Community School District from August 21, 2006 to May 26, 2016. She was discharged for presenting the employer with a fraudulent para-educator certificate and using profanity toward the executive assistant handling that matter for the employer.

On July 22, 2015, the employer sent para-educators' in the school district a letter and email notifying them that under the No Child Left Behind program they must maintain a para-educator certificate to satisfy the requirement of being a "highly qualified" teacher associate. The claimant had a certificate but it expired October 25, 2010 (Employer's Exhibit Four). On October 28, 2015, the employer sent associates another email stating they had to become highly qualified by the beginning of the 2016-2017 school year and listing the four ways associates could achieve highly qualified status (Employer's Exhibit Seven). On March 29, 2016, the claimant emailed a copy of her para-educator certificate to Executive Assistant Nicole Lee (Employer's Exhibit Five). That document did not contain a folder number, certificate issue date, expiration date, signature or seal from the Board of Educational Examiners (Employer's Exhibit Five). Ms. Lee was out of the office until April 25, 2016, at which time she contacted the claimant and told her that her certificate was expired and could not be used to meet the new standard of highly qualified. On May 25, 2016, Ms. Lee emailed the claimant to let her know the employer could not accept the claimant's para-educator certificate provided because it expired October 25, 2010. The email instructed the claimant that if she did not plan on renewing her

certificate she needed to take the Compass test and provide that documentation to the employer by July 29, 2016 (Employer's Exhibit Eight). The claimant called Ms. Lee at 10:45 a.m. May 25, 2016, and stated the employer had accepted another employee's expired credentials. Ms. Lee explained she could not respond to that allegation as she could not discuss another employee's information with the claimant. The claimant continued arguing with Ms. Lee who repeated the employer could not accept her expired documentation. The claimant then called Ms. Lee a "fucking bitch" and hung up on her (Employer's Exhibit Eight). Ms. Lee reported the conversation to the employer and on May 26, 2016, the employer notified the claimant her employment was terminated for "falsification, fraud, or omission of information in applying for a position or in completing job responsibilities," as well as "uncivil conduct" and "foul and abusive language" in violation of the employer's policies (Employer's Exhibits One and Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected

misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant stated she took a picture of her expired certificate, minus the issue and expiration dates as well as the seal and signature, with her phone and sent it to the employer, to prove she had a certificate, her explanation is not persuasive. The claimant knew her certificate expired October 25, 2010, and that the employer was requiring a current certificate or passage of the Compass test in order for her to work as a special education associate during the 2016-2017 school year. There was no reason for the claimant to send a copy of her expired certificate after the correspondence from the employer about that issue made it clear the claimant needed to obtain a new certificate. Additionally, the certificate the claimant sent did not contain the most important information which was the issue and expiration dates or a signature or seal from the Board of Educational Examiners. The most logical conclusion is that the claimant sent that document in an attempt to lead the employer to believe she obtained the required certificate even though she had not actually done so. Her actions were intentionally misleading at best and falsification of a document at worst.

The claimant contacted Ms. Lee May 25, 2016, and argued with her about the situation. She ended the conversation by calling Ms. Lee a "fucking bitch" and hanging up on her. That action was also a violation of the employer's policies which prohibit uncivil conduct and foul and abusive language.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 16, 2016, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs