

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESICA J VOSIKA
Claimant

LI'L SCHOLARS PRESCHOOL LLC
Employer

APPEAL NO. 14A-UI-02531-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/02/14
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 28, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 12, 2014. Claimant participated personally, represented by E. J. Flynn, Attorney at Law with witnesses Robert Leedom, Becky Powers, Jumica Dock, Jenny Hardisty and Kim Anderson. Employer participated by Gary Fischer, Attorney at Law with witnesses Marcie Johnston, Owner, Director and Jenna Sheeler, Pre School Teacher. Exhibits A through F, G and One through Seven were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 5, 2014.

Employer discharged claimant on February 5, 2014 because claimant took 25 minutes for a 15-minute paid break. Claimant took extra time because she was giving her child medication in another room. Employer discharges after three warnings. Employer's policy is in writing. Employer gave claimant a copy of the policy. The first two warnings were in writing. Employer suspended claimant for four days. Employer offered video proving that claimant was on break for a full 25 minutes. Claimant admitted to taking too much time for break. Claimant asserts that the company owner stopped her when claimant was on the way back from break. Claimant asserts she was delayed by the owner on February 5. Claimant asserts that the owner made her late. Employer's version that claimant did not stop in the owner's office is more credible. Employer's witnesses had documentation to back up their story. Claimant did not say anything about the owner precipitated delay during the discharge meeting. Employer's witnesses corroborated the lack of complaints about employer causing the delay in coming back from break. Claimant had trouble remembering many events including the old warnings.

Employer's policy deems that three warnings during a school year results in discharge. Employer interprets the policy as a rolling year before a warning is removed. All three current warnings were in the current school year.

Claimant asserts an ulterior motive for discharge. Claimant had complained about not getting paid for time worked. Claimant also complained about a problem child. There is insufficient information to establish either as a reason for a discharge.

REASONING AND CONCLUSIONS OF LAW:

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.

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning overextending breaks. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant violated a known company rule after two prior warnings. This is the third in a series of policy violations. It is an intentional violation. Employer's version of the reason for coming back late is more credible than claimant's version as it was backed up by corroborating testimony and documentation. Claimant had a lot of trouble remembering events. Claimant had to constantly refer to documents to refresh her recollection. Based on appearance action and demeanor at this in person hearing claimant's testimony is not as credible as that of employer's witnesses Johnston and Anderson. Where conflicts are found, employer's version is found correct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 28, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css