

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

MARY F NANFITO  
705 HILLCREST AVE  
COUNCIL BLUFFS IA 51503

ALEGENT HEALTH  
c/o JOHNSON & ASSOC/TALX  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 05A-UI-06611-DWT  
OC: 05/29/05 R: 01  
Claimant: Respondent (1)

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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Alegent Health (claimant) appealed a representative's June 16, 2005 decision (reference 01) that concluded Mary F. Nanfito (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2005. The claimant participated in the hearing. Terri Carlson testified on the claimant's behalf. Jessica Meyer, attorney at law, appeared on the employer's behalf with Judy Ring and Claudia Peterson as witnesses for the employer. During the hearing, Employer's Exhibit One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant most recently worked for the employer from June 28, 2004 through May 3, 2005. The claimant worked as a full-time teacher. Ring was her supervisor. The claimant understood and the employer's rules and state regulations require children to be supervised by an adult at all times.

On July 21, 2004, the claimant received a written warning for allowing a young child to play unsupervised by an adult on the employer's playground. (Employer's Exhibit One.) On April 8, 2005, Ring talked to the claimant about leaving a child outside unsupervised. On April 8, the children under the claimant's supervision had lined up and were all accounted for before they were to go inside. One child left the line and the claimant went to get the child off some playground equipment. The claimant did not know a second child also left the line up and went to play on some playground equipment. The claimant's assistant led the children into the building while the claimant went to get the first child. The claimant assumed all the other children were present and accounted for when her assistant led them into the building. When the claimant went inside with the first child, she did not do a second check. Instead, she started changing diapers so the children could have lunch. On April 8, 2005, the claimant understood that if there were any more problems with leaving a child unsupervised, her job was in jeopardy.

On May 3, 2005, the claimant worked with T.C. The 12 children assigned to the claimant and T.C. were hyperactive. Neither the claimant nor T.C. considered this a "good" day. When T.C. was at a table with six two-year olds, the claimant told her and the assistant director she was going to go into an adjoining room to get a jacket for a child. The claimant did not know that one child followed her into the adjoining room. When the claimant went into the adjoining room, she remembered this child did not bring a jacket and immediately went back to the main room. The claimant never saw the child who had followed her. She immediately noticed the child was not in the room and began looking for the child in the usual hiding places. About three to five minutes later, Ring found the child in another room alone and brought him back to the claimant's room.

On May 3, 2005, the employer gave the claimant the written final warning for the April 8, 2005 incident and a written warning for the May 3, 2005 incident. (Employer's Exhibits One and Two.) The employer discharged the claimant because she failed to make sure all children she had been assigned were properly supervised.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or

repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The facts do not, however, show that the claimant intentionally or substantially failed to do her job by making sure all children assigned to her were properly supervised. The claimant demonstrated she worked to the best of her ability. The incidents that occurred in April and May do not establish that the claimant was negligent or careless. The claimant did not commit work-connected misconduct. Therefore, as of May 29, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's June 16, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 29, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs