

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L HEATH
Claimant

APPEAL NO. 14A-UI-02989-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SHINING STARS CHILD DEVELOP CNTR &
Employer**

**OC: 02/16/14
Claimant: Respondent (1R)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 12, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 9, 2014, by telephone conference call. The claimant participated personally. Employer participated by Christine Hilzer, a school age teacher, and Dianna Marquardt, Owner. Employer's Exhibits 1-10 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a child care center. The claimant was hired on August 20, 2012, as a part-time teacher. Her last day of work was February 11, 2014. The claimant was admitted to the hospital for emotional and mental health issues on February 13, 2014. The employer terminated her employment. The employer terminated the claimant because it was concerned with her attendance and the quality of her work as well as her mental stability since she worked with children.

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 claimant is eligible for unemployment insurance benefits provided she is otherwise eligible. Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd., 810 N.W.2d 532 (Iowa Ct. App. 2012). Although the employer cited several reasons for the claimant's termination, the final incident was her hospitalization. This is not misconduct.

The administrative law judge has serious reservations on whether the claimant is able and available for work given her testimony at the time of the hearing. This case is remanded to the department to determine when and if the claimant is able and available for work.

DECISION:

The decision of the representative dated March 12, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be allowed if the claimant meets all other eligibility requirements. The issue of whether the claimant is able and available for work is remanded to the department for further investigation.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css