

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY C SMITH
Claimant

APPEAL NO. 11A-UI-12539-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEAR BASICS CHILDREN CENTER
Employer

OC: 08/14/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Courtney C. Smith filed a timely appeal from an unemployment insurance decision dated September 16, 2011, reference 01, that disqualified her from benefits upon a finding that she had voluntarily left employment without good cause attributable to the employer on August 16, 2011. After due notice was issued, a hearing was begun on November 3, 2011. It was concluded on December 22, 2011. Ms. Smith participated in the hearing on her own behalf. Glenale Smith and Traci Avant also participated. Claimant Exhibits A through C were admitted into evidence. Director and Co-Owner Elizabeth Bolin and Supervisor Noelle Bolin participated for the employer, Bear Basics Children Center. Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Courtney C. Smith was employed part time as a teacher by Bear Basics Children Center from August 2009 until she was notified that she had been discharged on August 19, 2011. Director Elizabeth Bolin suspended Ms. Smith on the evening of August 16, 2011. After the suspension, Ms. Smith contacted the Department of Human Services. She stated that Ms. Bolin had been irate and threw a set of car keys on August 16, 2011, that Ms. Bolin was at times irate in the presence of the children and that some of the lead teachers received bonuses for what Ms. Smith perceived to be working while off ratio. The Department followed up by visiting with Ms. Bolin. Ms. Bolin, Co-Owner Curt Bolin and Supervisor Noelle Bolin then decided to discharge Ms. Smith because of her complaint to the Department. Ms. Smith was notified of this when she came to pick up her paycheck on August 19, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. The parties agreed that the employer initiated the separation and that it was not a quit.

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 employer has the burden of proof. See Iowa Code section 96.6.2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The final incident leading to the discharge was Ms. Smith's complaint to the Department of Human Services. In answering the question of whether that complaint was an act of misconduct, the administrative law judge looks not to whether the complaint was accurate but whether it was made in good faith. No one from DHS was called to testify. The witnesses agreed in basic terms as to what complaints were made and investigated by the Department. The evidence does not persuade the administrative law judge that Ms. Smith acted in bad faith given her perception of the events that led to her suspension. The claimant may well have been insubordinate and acted inappropriately on August 16, 2011. Her behavior that night caused her suspension, not her discharge. Finding no misconduct in the claimant's report to the Department of Human Services, the administrative law judge concludes that the evidence does not establish disqualifying misconduct.

DECISION:

The unemployment insurance decision dated September 16, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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