

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELAINE H DAMMANN
Claimant

II FOR U DAYCARE LLC
Employer

APPEAL NO. 14A-UI-11308-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 24, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 19, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Jayci Miller participated in the hearing on behalf of the employer with a witness, Lauri Erie. Exhibits A through C were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the employer reported \$352.30 in wages for the second quarter 2014, which was included in the claimant's base period on her claim. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Is the claimant eligible for benefits because she was discharged before the effective date of her resignation?

FINDINGS OF FACT:

The claimant worked for the employer as a teacher in the two-year-old room from May 27, 2014, to September 26, 2014. After September 26, 2014, the claimant had requested and been approved to be off work until October 9, 2014.

On September 19, the mother of two children who were being cared for at the center approached the claimant to see if she would be interested in working as a nanny in the family's home. This was done outside of work over the phone and through emails. The claimant said she would consider it. On September 28, while the claimant was off work, the mother contacted the claimant again and the claimant agreed to start work on November 3. On September 29, the claimant sent a text to Jayci Miller, the owner and director of the daycare, explaining that a family had offered her a position as a nanny starting in November and that she would work through October 31.

Miller decided that the claimant would not be allowed to work through October 31 because she believed the claimant had recruited the family and it would be a conflict of interest to allow her to continue. Miller believed this violated a policy, but the employer's policies do not have any express policy on this issue.

When the claimant returned to Iowa on October 8, 2014, she discovered that she was not on the schedule to work. When she emailed the assistant director, Laura Erie, about this, Erie replied that the employer had elected to follow the policy of not allowing an employee to work if she recruited a family from the center or accepted a position that involved a conflict of interest.

The employer reported \$352.30 in wages for the second quarter 2014, which was included in the claimant's base period on her claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The rules, provide, that: "Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation." Iowa Admin. Code r. 871-24.25(38).

I concluded that the claimant did not violate any known work rules or policy when she agreed to work as a nanny for the family. As a result, the claimant is eligible for benefits from October 5, to November 1, 2014, if she is otherwise qualified. The employer would be subject to charge for its proportional share of benefits based on the \$352.30 in wages it reported during the claimant's base period.

DECISION:

The unemployment insurance decision dated October 24, 2014, reference 01, is reversed. The claimant is eligible for benefits from October 5, to November 1, 2014, if she is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs