

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERTRUDE MCDOWELL**  
Claimant

**APPEAL NO: 12A-UI-05305-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED METHODIST WOMEN  
BIDWELL-RIVERSIDE CENTER**  
Employer

**OC: 04/26/12  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Gertrude McDowell (claimant) appealed an unemployment insurance decision dated April 26, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from United Methodist Women/Bidwell-Riverside Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2012. The claimant participated in the hearing. The employer participated through Wendy Martinez, Center Director; Ann Bacon, Executive Director; Tara Bodin, Lead Teacher. Employer's Exhibits One through Ten were admitted into 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:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer's business is part of the child development center with a non-profit agency. The claimant was employed as a full-time assistant teacher from November 29, 2009 through April 6, 2012 when she was discharged for leaving a child unsupervised, in violation of the Iowa Department of Human Services (DHS) regulations. The employer is required to be in compliance with the DHS child care center licensing regulations. The DHS staff ratio mandates that a child "must never be left unsupervised by an adult" and "A person 18 years or older must be present in every child-occupied program room." The claimant signed an acknowledgment for receipt of the employer's handbook on October 1, 2009.

Assistant Teachers Ms. Tara, Ms. Ashley and the claimant were working outside on the playground with approximately 25 preschool children on April 5, 2012 and they were in ratio. The claimant took three children inside to go to the bathroom, two of the children were twins. At

all times, teachers are responsible for counting heads on the clipboard when a student leaves and when a student returns. The claimant subsequently returned outside with two children and the children's mother but did not have the third child with her. Center Director Wendy Martinez was in her office, which is in the hallway, and she saw the child washing her hands and went to question the child as to who was with her since there was no one else in the classroom. The child said "Ms. Trudy left me" so Ms. Martinez took the child into her office to wait for the claimant. The claimant never returned for the child so Ms. Martinez finally took the child outside to the playground. When Ms. Martinez took the child to the playground, Ms. Ashley asked Ms. Martinez if the child had been with her and she said no, since she only stepped in when she saw that the child had been left alone.

The claimant had received a written warning on October 6, 2010 for unsatisfactory work/quality, carelessness, violation of policies/procedures and violation of safety rules. This warning resulted from three incidents. Her husband was in the childcare building with approval, she took home personal, confidential information regarding the children and she was seen by several teachers "snatching" and "grabbing" a child to put them on a cot. The claimant was suspended for the rest of the day and advised her that continued incidents could lead to termination.

A second written warning was issued on October 3, 2011 for unsatisfactory work/quality, violation of safety rules and failure to follow instructions. The claimant had difficulty controlling her own behavior and that of the classroom, she needed to interact with the kids instead of walking around with the clipboard, and she was not performing the duties of her job description.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 26, 2012 for leaving a child unsupervised, in violation of the Iowa Department of Human Services (DHS) regulations. She denies any wrongdoing but the claimant was not a credible witness and the employer's evidence was compelling. There was an issue regarding the exhibits the employer submitted and the claimant repeatedly said she only had 11 pages instead of 17 pages. However, when the employer introduced its documentary evidence, the claimant had each of these pages. At the end of the hearing, the administrative law judge questioned the claimant to again confirm she had each page of the evidence, and she then denied having a page she had admitted to having earlier. When it was pointed out to her that she admitted she had it earlier, she again admitted she had it.

The claimant's actions could have jeopardized the employer's business interests. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated April 26, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs