

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEVERA A DEVOL-CHEVALIER**  
Claimant

**APPEAL NO. 10A-UI-16247-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 10-24-10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 16, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 13, 2010. The claimant did participate. The employer did participate through Scott Kaldwell, Director of Mental Health Services and Rochelle Shultz, Program Supervisor.

**ISSUE:**

Was the claimant discharged due to job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a case worker full time beginning September 23, 2002 through October 22, 2010 when she was discharged. The claimant was working as a social worker and as such was a mandatory reporter of child abuse in Iowa. In late July the claimant learned that a child she was the case worker for had been hit across the mouth by his father. The child was in the care of his grandmother who asked the claimant not to report the incident to the Department of Human Services (DHS) as she thought that would just further inflame the father. It was not up to the claimant to decide whether DHS would determine the incident to be founded or not, it was simply her job to report the abuse and let DHS take up the investigation. The claimant knew how to report abuse and had done so in the past. The claimant did not have permission from the employer to fail to report the incident. The employer did not have the authority to give the claimant permission not report the incident.

On October 18, the employer learned of the claimant's failure to report the incident when she told the employer she had been subpoenaed to testify in a court case regarding the child. Once the employer learned that the claimant knew of an incident of child abuse, but did not report it, they immediately required the claimant to report the incident. She did so. Because the claimant as a social worker and mandatory reporter had failed to fulfill her obligations as a mandatory reporter, she was discharged on October 19, 2010.

The claimant had been previously warned on August 12, 2008 about her failure to report an incident of child abuse when she learned that one of the children she was the case worker for had seen other children performing sex acts on each other.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was a trained social worker and knew or should have known that as a mandatory reporter of child abuse in the state of Iowa she was required to report any incidents of child abuse she learned of despite what DHS may or may not determine. The claimant did not report the abuse because she was asked not to do so by the child's grandmother. Failing to report because the claimant was asked not to do so by the caretaker is not an acceptable reason for failing to report. The claimant had been warned previously about another incident where she failed to report an incident of abuse. The claimant's conduct was sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The November 16, 2010 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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