

Families of Iowa from May 1, 2004 to July 29, 2005. On July 28, 2005, a parent filed a five-page complaint against the claimant. The child's DHS caseworker suggested a meeting between the claimant, her supervisor, the DHS caseworker, and the parent. During the course of the meeting, the parent complained that the claimant had taken the 12-year-old child into a place called Swirl's Liquor Store while she purchased a non-alcoholic drink mix. The store also sells pop, milk, bread, candy, etc. The claimant did not buy alcohol while in the store. When the claimant's supervisor heard about the incident during the meeting she became very upset and told the claimant she would turn the situation over to the Human Resources Department. On July 29, 2005, the claimant was scheduled to make a supervised visit but was told the visit was cancelled and she needed to go to Osceola to write a response to the allegations. After doing so the employer terminated her employment. There is no evidence that the claimant received any warnings prior to the date of her termination on July 29, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant argues that her actions were no different than taking the child to Casey's, Hy-Vee, Wal-Mart or Pizza Hut, all of which sell or serve alcohol, the administrative law judge disagrees because none of those establishments have the word "liquor store" in its name and none have as their primary purpose the selling or serving alcohol. That said, however, the claimant used poor judgment in taking a child in her care into a liquor store, even if the liquor store effectively doubled as a convenience store. This was an isolated incident, though, and the claimant had not received any previous warnings about her performance while employed at Children and Family Services. Consequently, while not condoning the claimant's actions, the administrative law judge concludes her actions were an isolated incident of poor judgment and, as such, does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 23, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw