

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JESSICA L MCCHESENEY  
320 S PROSPECT ST  
MAQUOKETA IA 52060-2837**

**HANDICAPPED DEVELOPMENT CENTER  
3402 HICKORY GROVE RD  
PO BOX 2450  
DAVENPORT IA 52809**

**Appeal Number: 06A-UI-01868-CT  
OC: 01/08/06 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Handicapped Development Center filed an appeal from a representative's decision dated January 31, 2006, reference 01, which held that no disqualification would be imposed regarding Jessica McChesney's separation from employment. After due notice was issued, a hearing was held by telephone on March 6, 2006. Ms. McChesney participated personally. The employer participated by Wendy DeWitt, Project Director. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McChesney was employed by Handicapped Development Center from October 25, 2004 until January 12, 2006 as a full-time instructor. The employer works with mentally and physically disabled adults and provides training to assist the individuals with independent living.

One of the individuals Ms. McChesney worked with, Joshua, will engage in behaviors such as tipping over chairs. On January 12, 2006, Ms. McChesney was the only staff person in the room when Joshua began tipping over chairs and hitting at other participants. The program director heard noise coming from the room and went to investigate. When she entered the room, she saw Ms. McChesney take Joshua's wrist and place it roughly in his lap. She then shook her finger at him and told him to stop. The program director felt she should have placed the chairs out of his reach, placed herself between him and the chairs, and/or called for assistance. The incident was not reported to the Iowa Department of Inspections and Appeals (DIA) as a case of abuse. Ms. McChesney was discharged on January 12, 2006 as a result of the incident.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McChesney was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. McChesney was discharged because she placed a participant's hand in his lap roughly, shook her finger at him, and told him to stop. It is noteworthy that the employer did not consider her actions to be abusive as no report was filed with DIA. Although her actions may have been inappropriate, they did not evince a willful or wanton disregard of the employer's interests or standards. Ms. McChesney's actions did not rise to the level of substantial misconduct.

While the employer may have had good cause to discharge Ms. McChesney, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated January 31, 2006, reference 01, is hereby affirmed. Ms. McChesney was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc