

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE M BALES

Claimant

APPEAL NO: 12A-UI-06660-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUILDING BLOCKS INC

Employer

OC: 04/29/12

Claimant: Appellant (2)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 30, 2012, reference 01, that held she was discharged for misconduct on May 7, 2012, and which allowed benefits. A telephone hearing was held on June 28, 2012. The claimant participated along with witness Patricia Sesker, former employee. Amy Kirkpatrick, attorney at law, represented the claimant. Sarah Castelein, director, and Cindy Hohenstein, owner, participated for the employer. Claimant Exhibits 1, 2, 3 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time teacher on May 22, 2006, and last worked for the employer as a teacher/supervisor on May 1, 2012. The employer hired Director Castelein on March 30, 2012 and the communication problems between her and claimant began.

The employer suspended claimant on May 1 for conducting an inappropriate fire drill, money handling, lack of communication with the director, and her releasing staff from work without permission. Claimant understood the period of the suspension was for three days: May 1, May 2, and May 3. She had not received any prior written discipline.

Employee Sesker was asked to come into the business to work prior to May 4, because claimant had been terminated. She also was later told the May 4 employer meeting did not go well. Claimant had been asked to turn in her keys.

Claimant returned to work on Friday, May 4. She made herself available for a scheduled meeting with the employer at 5:15 p.m. The employer-owner supervises the business from a

northern Minnesota location. She was not available for the meeting and claimant left at 5:45 p.m.

Claimant later received an employer e-mail communication on May 6 in response to her inquiry about her employment status. The employer response was her leaving the meeting meant she had made a decision that was employment termination. The employer director considered claimant to have quit employment when she failed to return to work on Monday, May 7, though the employer-owner said she would have her write the final notice.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on May 6, 2012.

The employer had not issued any written discipline to claimant prior to her suspension on May 1, 2012. The claimant reasonably understood it was for three days: May 1, 2, and 3. She complied with the employer's directive for a return-to-work conference meeting on May 4, which the owner missed. When she was terminated by employer e-mail on May 6, there had not been any further incident since May 1 other than claimant not waiting around for the meeting, which is not misconduct.

It is apparent there is considerable confusion between the employer absentee owner and the employer director on the employment separation issue. The owner terminated claimant in an e-mail on Sunday May 6, while the director states she voluntarily quit when she failed to report for work. The evidence does not support claimant voluntarily quit.

DECISION

The department decision dated May 30, 2012, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on May 6, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw