

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH GERSEMA,
Claimant

APPEAL NO. 11A-UI-11641-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRADLES 2 CRAYONS
Employer

OC: 08/07/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated August 24, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 22, 2011. This was a combined appeal with five total claimants. Tracy Shadle participated on behalf of all five claimants: Tracy Shadle, Beth Gersema, Angela Schuldt, Jocilyn Joynt, and Brittney Highland. Employer failed to answer the call for hearing and did not participate.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds the following facts. Five claimants—Tracy Shadle, Beth Gersema, Angela Schuldt, Jocilyn Joynt, and Brittney Highland—worked for Cradles 2 Crayons, a daycare facility. On August 8, 2011, a note was posted on the door of the facility which stated that the facility was closed at the end of business August 8, 2011. All five claimants were laid off effective August 9, 2011.

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.

Workers who are laid off through no fault of their own are entitled to unemployment insurance benefits. When an employer initiates a separation, the employer generally must prove work-related misconduct in order to effectively deny benefits to an unemployed worker.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant was laid off effective August 9, 2011.

DECISION:

The fact-finding decision dated August 24, 2011, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/kjw