

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEE ANN D SCOTT**  
Claimant

**APPEAL NO: 13A-UI-01818-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA EDUCATION AGENCY 267**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 7, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Mike Lonning, the principal, and Betty Beauregard appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

In August 2003, the claimant started working for the employer as a full-time education and bus assistant.

In mid-October 2012, Lonning talked to the claimant about the way she talked to or treated a student. This incident was reported by a classroom teacher and nurse who had been on the bus. Even though the employer talked to the claimant, her job was not in jeopardy.

On January 10, 2013, the claimant was involved in an incident with an autistic student. After the bus driver finished the route, he was concerned and troubled about a situation between the claimant and a student. He asked to review the tape from the bus company. The bus company reported the incident to the employer.

The employer received a copy of the tape. The tape recorded revealed that shortly after the student went on the bus, the claimant told the student, "You better behave or it will not be a good ride." The student had not said anything, but the claimant told the employer she knew she was going to have problems with the student when he came on the bus because she could see it in his face.

The video also revealed that while the claimant was talking to someone else, the student tried to interrupt the conversation. The student then hit the claimant several times and started hitting his head on the window of the bus. The claimant removed the headset the student had on to listen to his music. The claimant then made a comment, "You want to try that again."

The video shows the claimant then getting up and setting next to the student. She pressed against the student by using her foot on the seat across the aisle as leverage to push into the student. Based on the video, the employer concluded the claimant did not try to de-escalate the situation with the student. Instead, she challenged his actions and from the video she did not follow the correct procedure. She immediately restrained the student instead of attempting to de-escalate the situation.

Even though the claimant did not have the authority to decide the student would not be riding the bus the next day, she told this to staff as the student left the bus.

The employer discharged the claimant as of January 11, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant believed she treated the student appropriately, the evidence does not support this contention. First, the fact the bus driver was so concerned about what had happened and asked to review the tape on the bus after he returned from the route is an indication the January 10 incident between the student and the claimant was out-of-the ordinary. Probably the most damaging fact was the claimant's statement to the employer that when the student came on the bus, she knew she was going to have problems with him by the look on his face. The evidence demonstrates the claimant's frustration with this autistic student which was to the extent she told staff the student would not be allowed on the bus the next day.

The claimant's conduct toward this autistic student on January 10 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from her. The employer discharged the claimant for work-connected misconduct she exhibited on January 10, 2013.

**DECISION:**

The representative's February 7, 2013 determination (reference 01) is affirmed. The employer discharged the claimant on January 11, 2013, for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 13, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs