

**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**

**BRENDA DOHAHUE
524 BEN SWAIN DR
EL PASO TX 79915-4110**

**KIDS VIEW
1141 TOWER TRAIL LN
EL PASO TX 79907**

**Appeal Number: 04A-UI-04197-DWT
OC 02/29/04 R 12
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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kids View (employer) appealed a representative's April 7, 2004 decision (reference 02) that concluded Brenda Donahue (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2004. The claimant participated in the hearing with Norma Alvarez as a witness. Lourdes Luna, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2003. The employer hired the claimant to work as a full-time assistant director at a specific location. The claimant has 20 years of experience in daycare. Luna assumed the claimant had the necessary experience, knowledge, and common sense to do her job duties satisfactorily.

During the course of her employment, some of the employees at the facility complained about the claimant. Their major complaint was that the claimant talked to them about problems in front of co-workers. Other employees believed the claimant was a good assistant director and went out of her way to correct problems and help the employees at the facility. Luna did not believe the claimant always acted in a professional manner. Luna did not like the claimant snapping her fingers at employees even when she did so to prevent a child from becoming injured.

During her employment, the employer gave the claimant a written warning for the claimant's failure to count children before sending children to another facility. When the employer gave her this warning, the employer told the claimant that if there were any more problems during her probation the employer would discharge her.

Just before her discharge, the employer told the claimant to order food for a week for her facility. The claimant was supposed to order food with another director who was to give her guidance in ordering the food. The other director ordered the food she needed by herself and did not help the claimant. The claimant made an inventory of food she had at her facility and reviewed a previous food order. After comparing the two orders, the claimant concluded she had ordered the correct amount of food. The employer, however, concluded the claimant ordered enough food for a month.

On February 4, 2004, the employer discharged the claimant. The employer decided the claimant lacked experience, ability and did not have the common sense needed to satisfactorily complete her probation. The employer discharged the claimant for unsatisfactory work performance.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant performed her job duties to the best of her ability. The employer, however, was not satisfied with the claimant's job performance. An employer hires an employee under a probationary period so the employer has time to decide if the person works to the employer's standard and is a good fit for the employer's business.

Even though the employer received complaints from some employees, other employees respected the claimant and her ability to resolve problems and help employees understand the employer's rules. The employer established business reasons for discharging the claimant during her probation. Even though the employer received complaints, and observed some problems with the way the claimant interacted with other people, the facts do not establish that the claimant committed work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 7, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/kjf