

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTIN PETERSON**  
Claimant

**APPEAL NO. 13A-UI-03515-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILY RESOURCES INC**  
Employer

**OC: 02/17/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 13, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on August 14, 2013, in Davenport, Iowa. The claimant participated personally. She was represented by Jean Friemel, Attorney at Law. The employer participated by Stacey Cary, the director of human resources; Kim Huffstettler, the administrative assistant—Wittenmeyer Learning Center; and Patrick Barnes, the supervisor and trainer in therapeutic crisis intervention. The record consists of the testimony of Stacey Cary; the testimony of Kim Huffstettler; the testimony of Patrick Barnes; the testimony of Kristin Peterson; Claimant's Exhibits A and B; and Employer's Exhibits 1-20.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit agency that offers an alternative learning center for children from Dubuque to Burlington. The children who attend the center have not been successful in a regular school environment. The claimant was a teacher in the middle school. She was hired on August 1, 2006. Her last day of work was February 19, 2013. She was terminated on February 19, 2013.

The incident that led to the claimant's termination occurred on February 19, 2013. The claimant and a para-professional were responsible for twelve students. The children were scheduled to go for physical education. The claimant was informed that there was a situation in the gym and that the physical education class for the claimant's students would be delayed. The claimant took the students back to the classroom.

The claimant had difficulty maintaining control of the students. Two children were wrestling in the hall. Another student was sitting at a staff desk trying to use the computer. Still another student, J, was bantering with the two kids who were wrestling in the hall. J was standing in the door frame and using extreme profanity. The claimant tried to stop J but he told her to "shut the fuck up bitch." There were five other students who were present and they were agitated by J's behavior. The claimant was told to shut him up and get him out of here.

The claimant attempted to make a pathway for the remaining students to leave since the gym was now available. As she was doing this, J "came at" her. She grabbed J by the back of his head; pulled his hair; and pushed his head down on the table. She then told J that "I can't stand you anymore." At this point the principal, David Thompson came in, and intervened with J. The claimant approached Kim Huffstetler and told her what happened. The claimant took her personal things and left for the day.

The claimant had received a written warning and disciplinary suspension on December 7, 2011. The claimant had had made inappropriate statements to students on December 5, 2011, and December 6, 2011. (Exhibit 1) On November 18, 2011, David Thompson, the principal, had a conversation with the claimant concerning two instances when the claimant became extremely frustrated and lost emotional control with students. There was concern that the claimant had demonstrated an inability to resolve classroom issues and as a result, "her credibility as the classroom teacher is in question." (Exhibit 2) The claimant was told in both instances that further incidents would result in disciplinary action up to suspension or termination. (Exhibit 1 and Exhibit 2)

The employer concluded that the claimant had not used a proper restraint when she tried to move J away from the door frame. Although there are some forms of physical restraints that can be used, the neck and shoulder are off limits. The claimant had been trained on multiple occasions on the correct form of restraint. The employer also determined that the claimant's words and actions were abusive in nature. Since the claimant had received prior warnings about this type of behavior on her part and had been trained and retrained on how to handle these situations, the decision was made to terminate her employment.

#### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to establish misconduct on the part of the claimant.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence in this case shows that the claimant, despite training, experience, and prior disciplinary actions, engaged in behavior that was inappropriate and abusive towards a student for which she was responsible. The employer is responsible for the education of students who have not been able to go to regular school classrooms. These students can be challenging when it comes to teaching or maintaining order in the classroom. The employer had in place written policies on how challenging children were to be managed. The claimant knew that she needed to maintain emotional control and implement the various strategies she had learned when managing challenging students. Despite experience and training, the claimant restrained J in an incorrect way and said words that should not have been said. This incident with J is not an isolated instance of poor judgment. The claimant's prior conduct shows a pattern of abusive language toward students and an unwillingness to manage students in accordance with the employer's policies. The administrative law judge concludes that the employer has established misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated March 13, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten time her weekly benefit amount, provided she is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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