

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA C SELTZ**

Claimant

**APPEAL NO. 10A-UI-06590-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RABINER TREATMENT CENTER**

Employer

**Original Claim: 03/28/10**

**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 21, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on June 23, 2010. The claimant participated in the hearing with his attorney, Mark Crimmins. Aaron Patrick and Chris Wood testified on the claimant's behalf. Stuart Cochrane, attorney at law, represented the employer. John O'Brien, the principal, and Bev Buenting, a human resource assistant, testified on the employer's behalf. During the hearing Employer Exhibits One through Four were offered and admitted as evidence. 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 on August 16, 2004. He worked as a full-time physical education teacher. O'Brien has supervised the claimant since July 2008, when he became the principal. The claimant works with mentally challenged students who exhibit behaviors the claimant and co-workers need to know and understand how to handle. The claimant and his co-workers receive annual Mandt training. The employer's written policy informs employees the employer does not allow a one-person restraint on any student. The Mandt technique is not violated when a person used a one-person restraint. The employer's restraint policy, however, does not allow a one-person restraint.

On December 18, 2007 or 2008, the claimant received a written warning for grabbing a client, forcing a client to take a time-out, holding a client up against a hard surface and restraining a client on the floor while the claimant was in a prone positions. (Employer Exhibit Two.) In addition to the December 18 corrective action, the employer placed the claimant on a disciplinary probation until March 15, 2008. The claimant satisfactorily completed this probation.

(Employer Exhibit Four.) On February 7, 2008, the employer talked to the claimant about making sure he documented all restraining incidents.

After the claimant completed the disciplinary probation on March 15, 2008, there were no documented problems of a similar nature until March 2010.

On March 24, 2010, the claimant and two other teachers were in the gym with middle school clients. The claimant was working with a student to get the student back on track and to behave properly. The claimant was trying to get the student to sit up, when the student kicked the claimant in the head. The student then stood up and tried to hit the claimant. Patrick was also in the gym and went to assist the claimant when he noticed the problem. During the incident, the claimant restrained the student and moved him by himself. Patrick understood that as long as there was another person to witness a restraint, it was not a violation for one person to restrain a student or client. When this student butted his head against the wall, he injured his eye.

A Mandt trainer reviewed the March 24 video tape and reported the claimant had violated the Mandt technique. O'Brien also reviewed the videotape of the incident. O'Brien saw the claimant restrain the student without the assistance of anyone else. O'Brien saw the claimant use a one-person restraint. During his investigation, the employer learned about a March 11 incident. On March 11, an adult (not the claimant) was assigned to constantly monitor a student. While in the gym, the claimant saw the student with a table tennis racket in his hand. He looked as though he was going to beat another student's head with the racket. The adult monitor was sitting at table too far away to help the claimant. The adult monitor did not get up to help the claimant. The claimant restrained the student so he would not hit or beat another student with the racket. Patrick noticed the claimant needed assistance and helped the claimant take the student to a secluded restraining area.

On March 26, 2010, the employer discharged the claimant because he had violated the employer's policy that did not allow employees to use a one-person restraint as the claimant had done on March 11 and 24, 2010.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting a current act of 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).

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. 871 IAC 24.32(8).

The evidence establishes the employer had not addressed any problems with the way the claimant restrained or handled students for two years. After the claimant satisfactorily completed a disciplinary probation on March 15, 2008, there were no other problems until March 2010.

On March 24, 2010, the claimant used a one-person restraint on a student. Although this violated the employer's policy, the claimant did not violate the Mandt technique. The claimant acknowledged he violated the employer's restraint policy. However, the evidence indicates the claimant used one-person restraint because he did not want another teacher who was pregnant to get hurt and Patrick was not immediately available. On March 24, the claimant reacted to a situation so the student would not get harmed and so the student would not harm others around him. The claimant's actions on March 24 do not rise to the level of work-connected misconduct. He may not have reacted correctly to the situation or used poor judgment in this incident, but he did not intentionally or substantially violate the employer's restraint policy.

The incident on March 11 indicated the claimant restrained the student with the table tennis racket so he would not beat up another student. Again, the claimant did not commit work-connected misconduct. He reacted to the situation that occurred in part when an adult monitor failed to do his assigned job correctly. The claimant's actions prevented another student from getting beaten up by a table tennis racket.

In accordance with the employer's restraint policy, the employer discharged the claimant for justifiable business reasons. The facts do not, however, establish that the claimant committed a current act of work-connected misconduct. As of March 28, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 21, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of March 28, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw