

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA M FORD**

Claimant

**APPEAL NO. 09A-UI-02769-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDREN'S SQUARE USA**

Employer

**OC: 12/21/08**

**Claimant: Appellant (3)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Amanda Ford filed a timely appeal from a representative's decision dated February 13, 2009, reference 01, which denied benefits based upon her separation from Children's Square USA. After due notice a hearing was scheduled in Council Bluffs, Iowa on Friday, May 1, 2009. Ms. Ford participated personally. The employer participated by Pam Duffield, Site Director, Becky Snedeker, Director, and Michaela Ward, Human Resource Supervisor. Participating as the official interpreter was Karen Potter-Maxwell.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: Amanda Ford was employed by Children's Square USA as a teacher from March 17, 2008 until December 26, 2008 when she was discharged from employment. Ms. Ford was employed on a full-time basis and was most recently scheduled to work 7:00 a.m. until 3:00 p.m. Monday through Friday. Her immediate supervisor was Pam Duffield, the site director. The claimant was discharged when she chose to take time away from work between December 26, 2008 and January 5, 2009 without authorization from her employer. The employer is a child care provider who is required to provide an appropriate ratio of staff members to the number of children that are being provided care by the facility. Employees are required to request vacation time in advance giving the employer a minimum of five days' advance notice. Authorization for time away from work is at the discretion of the employer based upon staffing needs and other management criteria.

On December 10, 2008, the claimant met with Becky Snedeker, the director, and Pam Duffield, the site director, regarding the claimant's request for taking December 26, 2008 through January 5, 2009 off work to visit the claimant's sister in another state. During the meeting the employer noted that Ms. Ford had taken one month off in the month of September, a one-week

period at a later date and an extended weekend. The claimant had taken time to visit her sister in another state and had taken time for knee surgery and therapy appointments. The claimant's request to take the time off between December 26, 2008 and January 5, 2009 was, therefore, denied Ms. Ford because the claimant had already taken time away from work and because six of the center's employees had requested vacation time during that two-week period. The request by the other employees had been made substantially earlier in the year and had been approved by management. Based upon the number of employees who had already been authorized time off during the period in question, Ms. Ford's request was specifically denied. Although the claimant indicated that she had already purchased plane tickets to the state of Virginia for the period in question, she further indicated that she "understood" the employer's position. Ms. Ford was informed that she must decide between taking the trip and her employment with Children's Square USA. Ms. Ford did not respond further. The claimant continued to be scheduled to work during the week of the Christmas holiday. Ms. Ford reported for scheduled work on December 24 after arriving at approximately 8:45 a.m. that day. The claimant continued to be scheduled and expected to report back to work following the Christmas holiday on December 26, 2008. In an apparent effort to confirm to Ms. Ford the employer's expectation that she report for work as scheduled on that date, Ms. Duffield sent the claimant an e-mail informing the claimant that she was authorized to report for work on December 26, 2008 one hour later than usual. Ms. Ford e-mailed back that she "would not be in December 26." The claimant did not report for scheduled work on December 26, 2008 and provided no further notification to the employer. Subsequently, on or about December 31, Ms. Ford telephoned Ms. Duffield, the site director, regarding if she had been "fired" from employment. The site director responded that the employer considered the claimant had in effect resigned choosing not to report for scheduled work. The claimant was referred to the company's human resource manager who confirmed to Ms. Ford that her employment had ended.

It is the claimant's position that she had received no definitive answer as to whether she could take time away from work for the period in question. Ms. Ford maintains that previous time off was in part related to medical needs and that her request made on December 10 to be off work from December 26 through January 5, 2009 related to the medical needs of her sister. The claimant was not advised by a medical practitioner of a medical need to be with her sister during that period of time.

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

The first question is whether the evidence in the record establishes that the claimant was discharged and did not choose to voluntarily leave her employment. It does. The second question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record establishes that permission to take vacation time from Children's Square USA is at the discretion of the employer and employees are required to provide at least five days' advance notice of their requests. The evidence also establishes that the employer makes this decision on vacation requests based upon the number of employees available to meet staffing needs and other management considerations.

The evidence establishes that a number of other employees had requested time off during the two-week period encompassing December 26, 2008 and January 5, 2009 and that the requests of the other employees had been made substantially before Ms. Ford's request. The employer had granted permission to six employees to be absent during this period. During a meeting that was held on December 10, 2008 between Ms. Ford, Ms. Snedeker and Ms. Duffield, the claimant was denied authorization because she had taken substantial time away from work

before and because a number of other employees had already been granted permission to be gone during the time requested off by the claimant. The testimony of Ms. Duffield that the claimant's permission to be gone was specifically denied is corroborated by the testimony of Ms. Snedeker who was present at the meeting. Both witnesses agree in their testimony that although Ms. Ford was dissatisfied, the claimant nevertheless stated that she "understood" the request was denied. The claimant continued to be scheduled to work on December 26, 2008 and Ms. Duffield took the extra step of e-mailing the claimant allowing the claimant to report for work on December 26 one hour later than usual in an apparent effort to emphasize to the claimant the employer's expectation that Ms. Ford would be reporting as scheduled. The claimant, in turn, e-mailed back that she would not be reporting. The claimant did not report on December 26, 2008 and provided no further notification to the employer regarding her absence.

Based upon the claimant's intentional failure to report for scheduled work after being informed of the employer's specific expectation that she would do so, a decision was made not to allow Ms. Ford to return to employment. When the claimant heard the "rumor" that she had been fired, she called to confirm her status and the employer responded that the claimant had in fact resigned her position by choosing not to report for scheduled work.

Based upon the evidence in the record, the administrative law judge concludes that the claimant was discharged and did not choose to voluntarily leave employment.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate intentional culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of Iowa indicates that Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct. Absence due to matters of "personal responsibility" such as transportation problems, oversleeping or choosing not to report are considered unexcused. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). Refusal to follow reasonable work instructions constitute misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge concludes based upon the evidence in the record that Ms. Ford's discharge took place as a result of her willful decision to take time away from work after she had been specifically informed that the time had not been approved. The evidence establishes that the employer had not approved the claimant's request to be gone from December 26, 2008 through January 5, 2009 and that the claimant acknowledged her understanding of the disapproval at the time. Although the administrative law judge is cognizant that the claimant asserts that her absence was related to a medical necessity, the administrative law judge finds that assertion to strain credibility. The claimant was not advised by a medical practitioner that her presence was needed during the specific period of time involved in this appeal. The employer's decision to deny the claimant's request to be gone was both reasonable and work related. The claimant had been absent for extended periods on a number of occasions before and numerous employees had already claimed and been granted vacation time during the period of time during which Ms. Ford wished to be gone from work.

While the claimant's decision not to report for scheduled work after her request to be gone had been specifically denied may have been a good decision from a personal viewpoint, it nonetheless constituted a willful disregard of the employer's interests and reasonable standards

of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Act and thus was disqualifying. Benefits are denied.

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.

**DECISION:**

The representative's decision dated February 13, 2009, reference 01, is affirmed as modified. Amanda Ford is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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