

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| Claimant | APPEAL 19A-UI-09485-CL-T |
| Employer | ADMINISTRATIVE LAW JUDGE DECISION |
| | OC: 11/03/19 Claimant: Respondent (1) |

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 27, 2019, the employer filed an appeal from the November 20, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2019. Claimant participated personally and her mother observed. Employer participated through its owner, director, and assistant director. Employer's Exhibits were destroyed by the Appeals Bureau and not admitted into the record because they contained information that is confidential pursuant to Iowa Code Chapter 235A. Employer and claimant were made aware of this prior to the hearing. Neither party sent additional proposed exhibits.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 16, 2018. Claimant last worked as a full-time daycare staff. Claimant was separated from employment on November 5, 2019, when she was terminated.

Employer is a daycare.

Employer has a policy stating an employee with a registry report of founded child abuse will be terminated. Claimant was aware of the policy.

Employer has a progressive discipline policy. The policy provides that an employee will receive a first verbal or written warning and a second written warning prior to being terminated.

Employer has policies and procedures regarding food allergies and food intolerances. The policies and procedures prohibit employees from allowing children with allergies to ingest food items to which they are allergic. Employer has procedures in place to notify staff in the classrooms of allergies. Full-time staff are required to notify part-time staff in the room of children's allergies. Claimant was aware of these policies and procedures.

On July 8, 2019, employer gave claimant a written warning for allowing a child with a beef intolerance to ingest beef.

On August 21, 2019, claimant was working in a classroom with three other staff members. One of the other staff members was also a full-time employee. A child in the classroom had a milk allergy. One of the staff members in the room served the child milk. The child drank the milk. When claimant realized what occurred, she notified management immediately. Claimant stated she was unsure who served the child milk.

Employer questioned staff the next day. Employer could not determine who served the child milk, but felt claimant was responsible because she was a full-time staff member working in the room. Employer did not discipline claimant for the incident or report the incident to an outside agency.

On November 5, 2019, employer learned that claimant's name had been placed on the central abuse registry because of the incident on August 21, 2019. Employer terminated claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge (ALJ) concludes the claimant was not discharged for work-connected misconduct.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5(2)a. The rules define misconduct as deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. Iowa Admin. Code r. 871-24.32(1).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Whether the discharge was warranted 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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has credibly established it has a policy and practice of prohibiting employees who are placed on the child abuse registry from remaining employed. However, the issue with regard to

whether claimant is eligible for unemployment benefits is whether she engaged in willful and wanton misconduct in relationship to her employment.

In this case, employer has not established claimant was terminated for misconduct. Employer has not established claimant was responsible for the child ingesting milk. Even if employer had established that fact, the incident happened on August 21, 2019, and is not a current act of misconduct.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. 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.

The incident in question happened months prior to claimant's termination. Employer was aware of the incident and collected details regarding the incident, but chose to take no disciplinary action against claimant. Therefore, employer not only failed to establish claimant engaged in the conduct, but also failed to establish it was a current act of misconduct.

While the employer may have been justified in terminating the claimant based on her placement on the child abuse registry, work-connected misconduct as defined by the unemployment insurance law has not been established.

Because claimant is qualified to receive benefits based on this separation from employment, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The November 20, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
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January 3, 2020
Decision Dated and Mailed

cal/scn