

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FULISHA L BLANSHAN
Claimant

APPEAL NO: 13A-UI-10071-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

2 B TINY CHILD DEVELOPMENT CENTER
Employer

OC: 08/04/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 29, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the October 14 hearing. Lacey Steele, the director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

Before the employer hired her, the claimant received a deferred judgment in connection with a 2008 misdemeanor charge. The claimant was put on probation in 2009. She completed her probation six months early. Before the claimant could start working for the employer, she had to pass a background check. The Department of Human Services told the employer in April 2011 the claimant passed her background check. The employer hired the claimant to work as a full time teacher for three-year olds. Prior to July 22, 2013, the claimant's job was not in jeopardy.

The employer's policy requires background checks every two years for employees working with children. On July 22, 2013, the Department of Human Services informed the employer the claimant failed her 2013 background check and could no longer work with children. The Department of Human Services informed the claimant and employer that her last day of work as a teacher would be August 2, 2013.

The employer contacted the Department of Human Services to find out why the claimant was ineligible to work with children in 2013 when she had passed the background check in 2011 and nothing had changed since the first background check. The employer learned DHS made a mistake the first time. The employer then tried to find a way for DHS to give the claimant an

exception so she could continue working. The DHS representative could not give the claimant any exception. The claimant's last day of work was August 2 because she was no longer eligible, according to DHS, to work for the employer as a teacher.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for ending the claimant's employment. The employer was in a no-win situation after DHS held the claimant ineligible to work for the employer because of the deferred judgment on her record. Since the deferred judgment occurred before the claimant began working for the employer and DHS made a mistake during the claimant's first background check two years ago, the facts do not establish that the claimant committed a current act of work-connected misconduct. The employer tried unsuccessfully to keep the claimant as a teacher. The evidence does not establish that the claimant committed work-connected misconduct. As of August 4, 2013, the claimant is qualified to receive benefits provided she meets all other eligibility requirements.

During the hearing, the employer testified about offering the claimant a part-time cleaning position. Since this was not an issue for the hearing, if the employer wants to pursue this issue they should contact the local Workforce office. If this offer of part-time work was made before the claimant established her claim for benefits, she would not be disqualified from receiving benefits under 871 IAC 24.24(8). Also, to be considered a suitable offer of work, the offered position would have to pay the claimant the same wages she earned as a full-time teacher. Iowa Code § 96.5(3)a.

DECISION:

The representative's August 29, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of August 4, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs