

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA E JANSSON

Claimant

APPEAL NO. 10A-UI-05525-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY

Employer

OC: 02/14/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 5, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 24, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Greg Bolles participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a childcare worker from September 2, 2009, to February 4, 2010. She received a corrective action on December 16, 2009, for failing to administer medication to a four-year-old child with a severe milk allergy after a potential milk exposure on December 11. She was also warned about not immediately notifying the parents and the program manager. In this particular situation, the claimant thought the child might have leaned against a spill of tomato soup (made with milk) on a trash can. She contacted her coworker in the room right away. She inspected the girl and changed her clothes. She did not see where there had been any skin contact with the spill. She reported what had happened to a supervisor within 20 minutes. The child had no adverse reaction, so based on what she had observed in the past, she did not think the medication needed to be given or the parents and administrator immediately contacted.

On February 4, 2010, the claimant had prepared the snack for the class. She made sure there was a non-dairy alternative for the child with the milk allergy including pretzels, frosting, and water. The other children's snacks included the crackers, Goldfish, which have cheese in them. Before snack time, the claimant discovered a child's diaper needed changing. She told the supervisor that she was going to go change the child and would be back. The supervisor knew about the child with the milk allergy, and had to know Goldfish crackers contain dairy products. The child ended up eating some Goldfish crackers while the claimant was out of the room. The claimant was faulted for failing to specifically instruct the supervisor to make sure the child did

not have any Goldfish crackers. Since this was the second incident involving safeguarding a child with allergies, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) 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. 871 IAC 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 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 substantial and 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).

No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct in culpability has been shown. At the very most, the evidence establishes isolated instances of ordinary negligence, not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 5, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css