

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY B ELLIS
Claimant

APPEAL NO. 10A-UI-15508-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

Y W C A OF BLACKHAWK CO
Employer

OC: 06/27/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 5, 2010 (reference 04) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 4, 2011. Claimant participated. Employer participated through Assistant Director of Child Care Mindy Sternhagen and Executive Director Lucinda Mohr.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an after school care on-site supervisor and was separated from employment on October 7, 2010. On October 1 claimant was playing classical music on the radio at nap time. The teacher, Miss B., told her the music was too loud and claimant responded that it was nap time and asked her if they could keep the music at that level since it was on the lowest level possible. She did not speak disrespectfully and confrontationally to the classroom teacher, but claimant's immediate supervisor, Tanisha, told her the teacher had control issues. Claimant did tell Miss B., "That's real controlling" but did not tell a child that he's "not a baby and needs to stop." In the meeting on October 2, she was unclear about what employer expected of her and became emotional. Sternhagen told her they could move forward and she could "comply" or "just be done." Claimant was not unwilling to work on or sign the developmental plan dated October 2, but said she did not want to since she wanted the employer to discuss the matter with the school and Miss B. and not just her. Claimant asked what she meant by "comply" and told her that Miss B. was trying to get her job. Her supervisor, Tanisha, generally supported claimant's position on the issue but had no authority in the separation decision. The employer did not tell her that she would be fired if she refused to sign the development plan, and the document did not indicate a signature did not mean agreement but simply receipt, but told her she was done and her employment was terminated. Neither Sternhagen nor Tanisha ever observed events that were the subject matter of Miss B's complaints. Claimant had no other complaints from other teachers or school

personnel she had worked with at other sites. There were no other complaints from that site other than the one originating from Miss B on August 30 when the school reported that Miss B. had complained that claimant spoke to her disrespectfully after claimant was asked not to come into the room to set up before school was out. She did not tell the teacher to hurry up, cross her arms, or tap her feet while waiting. Claimant used her personal cell phone only to make arrangements for the children in after-school care. Employer issued a warning (developmental plan) earlier in the employment, which claimant signed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct

must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not established her final intention not to sign the document, since she had signed one previously and agreed to work on the issue with Miss B. Since the employer did not warn claimant that she would be fired if she failed to sign the development plan and her reluctance to do so at that point was reasonable given the history with that teacher and the employer's apparent reluctance to consider her concerns and response, employer has not established intentional misconduct. Benefits are allowed.

DECISION:

The November 5, 2010 (reference 04) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw