

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant	APPEAL 16A-UI-07702-CL-T
Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 06/12/16 Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 12, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2016. Claimant participated personally and was represented by an attorney. Employer participated through its human resource manager and director of human resources and was represented by an attorney. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 11, 2013. Claimant last worked as a lead direct support professional. Claimant was separated from employment on June 20, 2016, when she was terminated.

Employer has a policy stating that an employee with a registry report of founded child abuse shall not provide direct contact services unless authorized by central abuse registry to perform such work. Claimant was aware of the policy.

On March 22, 2016, employer learned that claimant's name had been placed on the central abuse registry. Claimant informed employer she was appealing the determination. Employer suspended claimant without pay.

By June 20, 2016, claimant's name remained on the registry and employer terminated her 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. The administrative law judge understands the employer is in an untenable situation because it is prohibited by law from presenting much of the evidence to support its position on the separation issue having failed to undertake an independent investigation of claimant's conduct.¹ However, the employer has the burden of proof in a discharge case. 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.

DECISION:

The unemployment insurance decision dated July 12, 2016, (reference 02) is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

¹ See Iowa Code Chapter 235A.

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Decision Dated and Mailed

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