

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M HEISTER
Claimant

APPEAL NO. 10A-UI-12083-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE HOLY FAMILY CATHOLIC
Employer

**OC: 07/25/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 19, 2010, reference 01, that held the claimant was not discharged for misconduct on July 28, 2010, and that allowed benefits. A telephone hearing was held on October 13, 2010. The claimant participated. Anita Valentine, and Chandra Massengale, Directors of Early Childhood Development, and Paul Jahnke, Consultant/Representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was re-employed about March 1, 2008, and last worked for the employer as a full-time assistant director on July 28, 2010. The employer operated two center locations. During a consolidation process involving the center locations, the employer reviewed some claimant comments and behavior.

The employer perceived claimant made some negative comments about the employer's conduct of business, and claimant made some inappropriate comments about the consolidation that should not have been shared with other persons.

The employer had a meeting with claimant on July 28 and provided some documentation to claimant about her comments and behaviors. The employer had an issue whether it could trust claimant. Claimant responded in a defensive manner, and she shared she had looked into a director's personnel file where she observed pay information. Claimant noticed that the employer had locked her out of computer use and other employee privileges prior to July 28.

Employer discharged claimant at the meeting on July 28 for inappropriate and un-loyal conduct (lack of trust) conduct that was not in the best interest of the employer. Prior to discharge, the claimant had not been issued any verbal or written discipline for any issue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 28, 2010.

The employer did not issue any discipline (verbal or written) to the claimant prior to the meeting where it decided to discharge her on July 28. Warnings are a means to put an employee on notice that conduct is unacceptable in order to establish the required standard of behavior that might subject an employee to discharge. Claimant was defensive during the meeting, because she believed the employer comments were untrue. The claimant feared she was losing her job due to the center-consolidation process. As a director (assistant), the claimant has more latitude than a subordinate employee to comment to the employer-directors during a closed-door meeting in response to allegations about her job performance. Claimant was not insubordinate in her comments or behavior at the July 28 meeting.

The employer failed to offer its disciplinary policy as evidence, and there is no evidence of any July 28 pre-meeting discipline. The claimant's conclusion she was discharged due to the consolidation that would affect her employment status is as plausible as the reasons offered by the employer. Job-disqualifying misconduct is not established.

DECISION:

The department decision dated August 19, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on July 28, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw