

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ADAM T LANE

MIDWEST ACADEMY LLC
2415 – 340TH ST
KEOKUK IA 52632

KELLEN ANDERSON
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05O-UI-08984-HT
OC: 04/10/05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Midwest Academy, filed an appeal from a decision dated May 6, 2005, reference 08. The decision allowed benefits to the claimant, Adam Lane. After due notice was issued, a hearing was held by telephone conference call on September 28, 2005. The claimant participated on his own behalf. The employer participated by Academic Coordinator Layani Trane and Boys Academic Supervisor Pam Foster, and was represented by Employers Unity in the person of Kellen Anderson.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Adam Lane was employed by Midwest Academy from December 6, 2004 until April 13, 2005. He was a full-time teacher.

Beginning shortly after his date of hire the claimant was the subject of a number of grievances from both students and staff. The complaints stated he was "too bossy," and belittled students, and had a habit of standing far too close to the students for their comfort. Academic Coordinator Layani Trane and Supervisor Pam Foster counseled Mr. Lane on these issues on December 23, 2004, February 7, March 8 and April 3, 2005. In addition, he was issued a written warning and one-week suspension on March 8, 2005, for lying to the supervisor. He was advised his job was in jeopardy.

On April 11, 2005, another teacher, Megan Pfeifer, complained to Ms. Foster that the claimant had told her all the students were coming to her for tutoring because they "had a little juice in their snakes" for her. In addition, she complained she had overheard the claimant telling at least one student to his face that he was "stupid."

Ms. Foster investigated by interviewing Ms. Pfeifer and one student, Alex. The student confirmed that Mr. Lane had called him stupid. Ms. Foster conferred with Academic Coordinator Layani Trane on April 13, 2005, and the decision was made to discharge the claimant based on the final complaint and his disciplinary history.

The claimant denied making the comment that the students "had a little juice in their snakes," but did admit to telling Ms. Pfeifer that it was "sap running season." He stated he only meant to ask "what was going on" that the students were walking right by him and going to her for assistance. He did not explain how "sap running season" related to the students in any way that was non-sexual.

Adam Lane filed a claim for unemployment benefits with an effective date of April 10, 2005. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised his job was in jeopardy as a result of his job performance. The employer has the right to expect its employees to conduct themselves in a professional and courteous manner toward co-workers and students. Mr. Lane had a substantial history of problems in this regard, having been the subject of grievances from students and staff since the very beginning of his employment. The employer counseled him and tried to deal with the situation constructively, but to no avail.

The administrative law judge does not accept the claimant's explanation that he made another comment about "sap" rather than the one attributed to him by Ms. Pfeifer. His credibility is seriously impaired by the incident of lying to his supervisor, for which he was suspended. In addition, the final incident was not an isolated case of poor judgment but a final occurrence of discourteous, unprofessional and inappropriate conduct. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 6, 2005, reference 08, is reversed. Adam Lane is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw