

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODELL L PLAVAK**  
Claimant

**APPEAL NO. 11A-UI-11960-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLINTON COMMUNIITY SCHOOL DIST**  
Employer

**OC:08/07/11**  
**Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 2, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 17, 2011, in Davenport, Iowa. Claimant participated. Employer participated by Dan Boyd, principal Lyons Middle School, and Jess Terrell, human resources director. The record consists of the testimony of Jess Terrell; the testimony of Dan Boyd; the testimony of Jodell Plavak; Claimant's Exhibits A and B; and Employer's Exhibits 1-34.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on August 24, 2009. She was a teacher in Lyons Middle School, which is part of the Clinton Community School District. She was assigned to teach students with moderate mental disabilities. She had four students in her classroom. The claimant's contract was terminated by the Board of Education on April 25, 2011, following a second reprimand. This second reprimand was given on March 31, 2011, and was for insubordination. The claimant was initially suspended with pay. She did work as a substitute teacher in other locations until the end of the school year on May 25, 2011. She was not permitted to return to her classroom. The actual separation date was June 30, 2011, which marked the end of her contract.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

The evidence in this case established that the claimant's teaching contract was terminated by the Board of Education on April 25, 2011. This meant that the claimant would not be returning to work in the school year of 2011-2012. The claimant's termination was based on an incident which occurred on March 31, 2011, which led to a second reprimand in the school year. The claimant had been asked to attend a meeting with Dan Boyd and Jess Terrell to discuss an incident that had occurred on March 24, 2011. The claimant became argumentative, angry and refused to continue with the meeting. This failure to stay at the meeting is what led to first a suspension with pay and then a recommendation to terminate the claimant's contract.

Although the Board of Education did terminate the claimant's contract, it did so for the next academic year. Following the incident of insubordination on March 31, 2011, and even following the Board of Education's action on April 25, 2011, the claimant was permitted to keep working. She was not permitted to return to her classroom but rather was given substitute teaching assignments in other buildings. Jess Terrell testified that this was done to permit the claimant to have the benefits of health insurance since she was providing this coverage for her family.

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 law further limits disqualification to current acts of misconduct. The issue in this case is whether the claimant was discharged for a current act of misconduct. Put another way, this case turns on whether the alleged acts were *current* in terms of the discharge.

The discharge in this case did not take place until the claimant's contract expired on June 30, 2011. The final incident that led to the claimant's discharge took place on March 31, 2011. The administrative law judge is mindful that teacher terminations require that a school district take multiple steps with required notice and that the termination process is therefore longer than might be present with other employers. The school district did take prompt action to terminate the claimant's contract but again, that termination was for the next academic year. Even after the school board's action on April 25, 2011, the claimant was still permitted to work as a substitute teacher, albeit not in her original classroom. This was done to permit her to continue her health insurance. Because the claimant's contract was not immediately terminated and because the claimant was permitted to continue working after the alleged misconduct, the claimant's discharge was not for a "current" act of misconduct. Only a termination for a current act of misconduct disqualifies a claimant from receiving unemployment insurance benefits.

The administrative law judge concludes that since the claimant was not discharged for a current act of misconduct, there can be no disqualification for benefits based on the discharge. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated September 2, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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