

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN J SUNDINE
Claimant

APPEAL NO. 09A-UI-11447-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRYSILIS INC
Employer

OC: 06/28/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Krysilis, Inc. filed an appeal from a representative's decision dated July 31, 2009, reference 01, which held that no disqualification would be imposed regarding Karen Sundine's separation from employment. After due notice was issued, a hearing was held by telephone on August 25, 2009. Ms. Sundine participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Donna Kluss, Human Resources Coordinator; Loreli Redemske, Residential Coordinator; and Verna Dirksen, HCBS Manager.

ISSUE:

At issue in this matter is whether Ms. Sundine was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Sundine was employed by Krysilis, Inc. from September 22, 2008 until June 1, 2009 as a part-time direct support staff member. On March 30, 2009, she was given a "last chance" notice because she had been absent on March 6 and 12. Neither absence was properly reported.

The decision to discharge Ms. Sundine was due to the fact that she was absent on May 28 and took a child with her to work on May 29. Earlier in May, she had been given a schedule that contained changes from what had originally been posted. The new schedule (Exhibit A), contained dates that were already on the original schedule as well as new dates and times. The new schedule did not contain May 28 and, therefore, Ms. Sundine believed she had the day off. She did not call to report she would be absent because she did not know she was expected to work. On May 29, she took a friend's three-year old child with her to a client's home for approximately one hour while she found other day care for the child. Ms. Sundine was notified of her discharge on June 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order to impose a disqualification from job insurance benefits, the evidence must establish a current act of misconduct. 871 IAC 24.32(8). The administrative law judge concludes that the employer has failed to establish a current act of misconduct.

Ms. Sundine's discharge was prompted, in part, by her absence of May 28. Based on the new schedule she was provided, she had reason to believe she was not scheduled to work on May 28. Because the new schedule contained dates that she had been originally scheduled to work as well as new dates, there was room for misunderstanding as to whether it represented her complete schedule for the month of May. It is concluded that the absence of May 28 was due to a good-faith misunderstanding rather than intentional misconduct.

The other matter that triggered the discharge was the fact that Ms. Sundine took a child with her to work on May 29. She acknowledged that she took a child to work with her. The employer's policy prohibits staff from having visitors at work in client's homes. The three-year old child was too young to represent a compromise of the client's right to confidentiality. The child was only in the home for one hour while other arrangements were being made. Ms. Sundine's actions were not so substantial a deviation from the employer's standards as to constitute a willful or wanton disregard of the employer's standards.

It was within the employer's prerogative to discharge Ms. Sundine. However, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as there was no current act of misconduct in relation to the discharge date, no disqualification may be imposed. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 31, 2009, reference 01, is hereby affirmed. Ms. Sundine was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs