

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RENE L MOORE**  
Claimant

**APPEAL NO. 14A-UI-07462-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 06/15/14**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 9, 2014 (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on August 12, 2014. The claimant did participate. The employer did participate through Shannon Hagensten, Director of Human Resources, and Christine Davis, Principal. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a special education teacher beginning on August 17, 2009 through June 18, 2014 when she was discharged. In late 2012 the employer changed the philosophy about how they wanted to teach the students and what type of classroom they wanted to create. The teachers, including the claimant, were trained and the new expectations and methods of accomplishing tasks were explained. The claimant was never able to master the new methods and techniques. It is clear that she struggled from the beginning with implementing and understanding the changes. She did her best but struggled particularly with the uneven application of rules. For instance, neither she nor any other teachers were to provide food or drink for the students. The claimant gave a piece of candy to student and was reprimanded while another teacher routinely bought students meals from McDonalds and was never even told that the action was inappropriate.

The new software system required much more extensive time to input lesson plans. The claimant did complete her lesson plans, but simply did not have the time to type them into the software system. The claimant performed to the best of her ability, but under the new philosophy was just simply unable to meet the employer's expectations.

By April 1, 2014 the employer notified the claimant that her teaching contract would not be renewed for the next school year 2014/2015. She was led to believe that if she improved her performance she would have a chance to have a new contract offered to her. She did not meet the employer's expectation and thus at the end of the school year, in June 2014, no new contract was offered to her.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). Since employer agreed that claimant had never had a sustained period of time, after the philosophy change in 2012, during

which she met the employer's expectation and inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

**DECISION:**

The July 9, 2014 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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