

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTIN L RODGERS
Claimant

APPEAL NO. 19A-UI-04074-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FROG HOLLOW CHILD DEVELOPMENT
INC**
Employer

OC: 04/21/19
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Christin Rodgers filed a timely appeal from the May 9, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on April 22, 2019 for violation of a known company rule. The claimant requested an in-person hearing. After due notice was issued, an in-person hearing was held in Cedar Rapids on August 27, 2019. Ms. Rodgers participated. Attorney Todd Stevenson represented the employer and presented testimony through Erin Vens, Maddison Wolver and Nicole Schottmiller. Exhibits 1 through 6 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a state-licensed daycare located in North Liberty. Christin Rodgers was employed by Frog Hollow as a full-time Lead Teacher in the two-year-old and three-year-old room until April 22, 2019, when the employer discharged her for directing a threat at a three-year-old in her care in violation of the employer's work rules and state-licensing regulations. Ms. Rodgers began the employment in 2016.

At the start of the employment, the employer provided Ms. Rodgers with an employee handbook. The handbook included a section on discipline of children in the care of the daycare. The employer's written policy included the following: "Verbal sanctions that are unduly humiliating or abusive may not be used." The language in the policy echoed language in Iowa Administrative Code rule 441-109.12(2)(d): "No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family." The employer reviewed both the discipline policy and the Administrative Code rule with Ms. Rodgers at the start of her employment. Both continued to apply throughout Ms. Rodgers' employment.

On April 22, 2019, Ms. Rodgers became frustrated with a boy in her care. The child in question had just turned three years old. Ms. Rodgers tripped over the child's foot while the child was drying his hands in preparation for lunch. Ms. Rodgers told the young child, "If you don't stop tripping me, I'm going to kill you." Ms. Rodgers was looking at the child when she uttered the comment. Another employee, Maddison Wolver, was present in the room. Ms. Wolver witnessed the incident and heard the utterance. Ms. Wolver and Ms. Rodgers are each certified mandatory child abuse reporters. Ms. Wolver promptly notified Erin Vens, Child Care Center Director. Ms. Vens promptly conferred with Nicole Schottmiller, Executive Director. Soon thereafter, Ms. Vens met with Ms. Rodgers for the purpose of discharging her from the employment. When Ms. Vens met with Ms. Rodgers, Ms. Rodgers did not deny making the statement attributed to her, but said if she had said something inappropriate, she had not meant it. Ms. Rodgers concedes that she may have made the comment attributed to her, but asserts that it would have been inaudible to others.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See *Henecke v. Iowa Dept. Of Job Services*, 533 N.W.2d 573 (Iowa App. 1995).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes a discharge for misconduct in connection with the employment. The weight of the evidence in the record establishes that Ms. Rodgers did indeed violate the employer’s child discipline policy and the Administrative Code rule by directing a threat of violence to a young child. Ms. Rodgers was fully aware of the employer’s policy regarding verbal sanctions at the time she elected to direct the threatening comment at the child. The evidence provided no basis to discount the credibility or reliability of Ms. Wolver’s testimony. On the other hand, Ms. Rodgers conceded in her testimony that she *may* have made the comment. The context of the utterance, including the tender age of the child and Ms. Rodgers’ role as the child’s caregiver, are important. The utterance reflected an intentional and substantial disregard for the child’s wellbeing and of the employer’s interests. Ms. Rodgers is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Rodgers must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The May 9, 2019, reference 01, decision is affirmed. The claimant was discharged on April 22, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs