

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY B CASSIDY
Claimant

APPEAL NO. 11A-UI-06323-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILDREN AND FAMILIES OF IOWA
Employer

OC: 02/27/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Mary Cassidy filed a timely appeal from the May 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 9, 2011. Ms. Cassidy participated. Karen Spring represented the employer and presented testimony through Christina Pulley.

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 operates a child care center that serves children aged 2 to 10. The children served by the day care center have been diagnosed with development delays and/or emotional or physical disabilities. Some of the children have been victims of neglect and/or abuse. Some of the children have behavioral issues. Mary Cassidy was employed by Children and Families of Iowa as a special needs lead teacher. From May 2010 until February 23, 2011, when Christina Pulley, child care center coordinator, and Lacy Butler, program supervisor, discharged her from the employment for improperly disciplining a four-year-old child in her care in violation of the employer's established policies. Ms. Cassidy has a degree in elementary education and decades of teaching experience. Ms. Cassidy performed work for the employer as a substitute teacher prior to commencing full-time employment with the employer. In addition, Ms. Cassidy underwent extensive training with the employer to cultivate the skills she needed to provide proper care to the children under her supervision. The employer has a policy that at no time will staff engage in discipline of a child that causes pain, discomfort, or humiliation to the child. Ms. Cassidy received proper training in this policy and many others.

The final incident that triggered the discharge occurred on February 23, 2011. Ms. Cassidy was the only adult present in her assigned classroom while her assistant was in the hallway addressing a student's behavioral issues. Ms. Pulley went to the classroom to assist Ms. Cassidy because the other teacher was busy outside the classroom. Ms. Pulley was about to enter Ms. Cassidy's classroom when she observed through a window Ms. Cassidy interacting with a four-year-old student. The student had previously suffered abuse in the home and his behavior issues included throwing tantrums. Ms. Pulley observed the child acting out his behavioral issues. The child was screaming, then dropped to his knees and stopped the behavior. After the child had stopped the behavior, Ms. Cassidy grabbed the child by the wrist. Ms. Cassidy then lifted and dragged the child along as Ms. Cassidy walked toward a chair. At that point, Ms. Pulley opened the door and confronted Ms. Cassidy about her conduct. Ms. Pulley told Ms. Cassidy that it was unacceptable to interact physically with the child as Ms. Cassidy just had. Ms. Cassidy said okay and that she was sorry. Ms. Pulley reported the conduct to Ms. Butler. The employer discharged Ms. Cassidy from the employment later that day.

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.

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). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes misconduct in connection with the employment. Ms. Cassidy was well aware of the special needs of the student population she served. Ms. Cassidy was well aware of the special needs of the four-year-old child in question. Ms. Cassidy had received proper training both as a teacher and as an employee of Children and Families of Iowa. Ms. Cassidy jettisoned her training and the employer’s student discipline policy when she thought no one was looking and engaged in arguably abusive conduct toward a young boy whose behavioral issues arose in part from a history of abuse. At minimum, Ms. Cassidy’s conduct was in willful and wanton violation of the employer’s student discipline policy. That policy was in place to protect the students, staff, and the employer and to facilitate a safe learning environment for at-risk children. Ms. Cassidy has provided a number of excuses for her behavior. One of those excuses was that Ms. Cassidy *always* grasps children by the wrist because she *just doesn’t take hands*. There is nothing at all in that statement that mitigates the conduct. Instead, the statement indicates an approach to students, and to that student, that involves overpowering and controlling the student, rather than responding to inappropriate behaviors through appropriate discipline. The weight of the evidence provides no reason to discount Ms. Pulley’s testimony, but multiple reasons to discount the testimony provided by Ms. Cassidy. These included Ms. Cassidy’s theory regarding the alleged conspiracy to mess with her classroom and force her out versus Ms. Pulley’s testimony regarding the employer’s need to have Ms. Cassidy’s classroom conform to the established curriculum requirements. What Ms. Pulley witnessed was Ms. Cassidy overpowering and controlling the four-year-old in question. But there was more to it even than that. Whether one concludes that Ms. Cassidy lifted the child by the wrist or merely dragged the child by the wrist, the conduct involved an inappropriate use of force directed at the student.

Ms. Cassidy is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer’s account shall not be charged for benefits paid to Ms. Cassidy.

DECISION:

The Agency representative's May 6, 2011, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw