

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERYL L WILLIAMSON
Claimant

APPEAL NO. 12A-UI-08901-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD
Employer

**OC: 06/17/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The Iowa Department of Human Services/Woodward filed a timely appeal from a representative's decision dated July 16, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 30, 2012. Ms. Williamson participated personally. Participating on behalf of the claimant was Ms. Dorothy Dakin, Attorney at Law. Participating as witnesses for the claimant were Joyce Hoskins, Marty Van Schuyver and Nancy Gomez. The employer participated by Ms. Debra Campbell, Hearing Representative and witnesses Steve Overstreet, Holly White and David Fox. Employer's Exhibits A, B, C, D, E, F, G, J and K were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The claimant was employed by the Iowa Department of Human Services from November 10, 2005 until June 21, 2012 when she was discharged from employment. Ms. Williamson worked as a full-time resident treatment worker and was paid by the hour. Her immediate supervisor was Ms. Holly White.

Ms. Williamson was discharged by the Iowa Department of Human Services following an internal investigation of an incident that took place on May 22, 2012. The employer concluded that Ms. Williamson had violated agency policy by engaging in inappropriate discussions and or behavior with a dependent adult and believed that the claimant's conduct was "mistreatment" of the individual. Because the employer believed that there was consistency in the statements made by witnesses during the investigation a decision was made to terminate Ms. Williamson. The individuals who witnessed the event were not called to testify as witnesses at the hearing.

During the incident in question that took place on or about May 22, 2012, Ms. Williamson was on duty and providing care to a male individual who was 40 years of age but was determined to have an intellectual equivalent of approximately four years of age. Ms. Williamson and the dependent adult were seated on a swing in a public area in the view of a number of witnesses who were present. Ms. Williamson was providing care to the individual and attempting to channel his conduct from being aggressive. It appears aggressiveness on the part of the individual is often triggered by any type of what he considers to be rejection. During the incident the individual had his head on Ms. Williamson's shoulder as he sat in the swing and the individual hugged Ms. Williamson from time to time during the conversation between the parties. The individual touched a lower portion of Ms. Williamson's shorts and made statements about buying a house, marrying, etcetera. This conduct was not unusual on the part of this dependent adult and staff members were aware of the individual's proclivity to close contact hugging and verbalizing imaginary plans for the future with various staff members. Staff members were also generally aware that because of the nature of the individual's disability he often became very aggressive when faced with any type of what he considered to be a rejection from staff. Staff members often avoided conduct that appeared to be rejecting as then the individual might be angered and engage in biting, kicking, etcetera.

When questioned during the investigation Ms. Williamson denied any inappropriate conduct, behavior or touching regarding the individual in question. The claimant allowed the individual to act in a somewhat familiar manner because that was his general nature and the best way to interact with him to avoid the dependent adult's anxiety level to rapidly escalate.

Other individuals who worked directly with the individual in question verified the dependent adult's nature and further verified the manner used by Ms. Williamson in dealing with the individual was not unusual or unique to the claimant. The individual's mother verified that she had been fully informed of the incident and agreed that the manner being used by Ms. Williamson was appropriate in dealing with her son's development disabilities. Prior to the incident in question the claimant had not been warned or counseled for anything similar. It is the claimant's belief that the versions of the events submitted by other witnesses who did not testify may have been intentionally contrived.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

Allegations of misconduct without additional evidence shall not be sufficient to result in a 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 the deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter the claimant appeared personally and provided sworn testimony categorically denying acting in any inappropriate manner when providing care to a dependent adult on or about May 22, 2012. The claimant has provided other first-hand testimony corroborating that the claimant did not act inappropriately and that her manner in dealing with the dependent adult was not unusual and was allowed to effectively meet the dependent adult's needs and to avoid conflict. Ms. Williamson categorically denies that any inappropriate physical contact took place between either her or the dependent adult. Although the statements provided to the employer by other individuals who were present contradict Ms. Williamson's testimony. The administrative law judge finds the claimant to be credible in her testimony and finds that her testimony is not inherently improbable. The claimant's testimony about what happened that day and the proper tact to use with the individual was also corroborated by other first-hand witnesses.

While hearsay evidence is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge having considered the matter at length concludes that the weight of evidence is established in favor of Ms. Williamson.

The question before the administrative law judge in this case is not whether the employer made a proper management decision in discharging Ms. Williamson based upon the allegations but whether the discharge is disqualifying under the provisions of the Employment Security Law.

While the decision to terminate Ms. Williamson may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 16, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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