

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MICHELLE L MCCLELLAND
2322-24 W 111TH ST #308
CHICAGO IL 60643**

**LITTLE HANDS LEARNING CENTER
2324 W 111TH ST
CHICAGO IL 60643**

**Appeal Number: 04A-UI-04850-CT
OC: 07/13/03 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michelle McClelland filed an appeal from a representative's decision dated April 15, 2004, reference 04, which denied benefits based on her separation from Little Hands Learning Center. After due notice was issued, a hearing was held by telephone on May 24, 2004. Ms. McClelland participated personally and Exhibits A through D were admitted on her behalf. The employer participated by Michelle Brent, Director.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. McClelland was employed by Little Hands Learning Center from September 15, 2003 until March 12, 2004. She worked as a lead teacher and assistant director. She was discharged from the employment.

Ms. McClelland received a written warning on September 22 because she left a child on the playground by himself. The child was hiding and she did not know he was still outside when she took other children inside. On January 23, Ms. McClelland yelled at a coworker and later submitted a written apology. No disciplinary action was taken as a result of the incident. On January 28, Ms. McClelland was to open the facility but was 90 minutes late without notice. She did not call anyone to have the facility opened. As a result, other staff as well as parents had to wait. She received a written warning for this incident. The employer decided that Ms. McClelland would have to compensate the parents for the delay and would have money deducted from her pay for this purpose.

On March 12, Ms. McClelland was asked to sign a document authorizing the employer to make deductions from her pay to reimburse the employer for compensating parents for the inconvenience of having to wait on January 28. Ms. McClelland refused to sign the document when it was presented to her after she returned from lunch. Later that afternoon, she was asked to sign an "Exit Agreement," which had initially been presented to all employees during a meeting on February 16, 2004. Ms. McClelland usually performed assistant director duties in the afternoons. At approximately 3:45 p.m. on March 12, she was assigned to work in a classroom. There were at least three other staff members present in the classroom she was assigned to. Ms. McClelland was not made aware of any problems or incidents, which occurred in the classroom that afternoon. She was notified of her discharge at the end of her shift on March 12.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McClelland was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification may be imposed, the evidence must establish that the discharge was due to a final act which constituted misconduct within the meaning of the law. In the case at hand, the employer alleged that Ms. McClelland left children unattended on March 12 and a child was injured. The administrative law judge is satisfied that she did not, in fact, leave children unattended as there were at least three other staff members present in the classroom. In correspondence the employer sent to the Illinois Department of Labor in response to a wage claim filed by Ms. McClelland, the employer indicated the child was injured at 10:30 a.m. During the hearing, the employer stated that the injury occurred after 4:30 p.m. and that the time in the letter was a typographical error. The administrative law judge is not persuaded that it was a typographical error. Moreover, the employer did not have Ms. McClelland complete an incident report concerning any injury to a child.

The employer's evidence did not establish that Ms. McClelland was negligent with regard to the care of children on March 12. As such, the employer has failed to establish any act of misconduct on that date. The next most prior adverse conduct was on January 28 and would,

therefore, be too remote in time to be considered a current act in relation to the March 12 discharge date. For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct which 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). Benefits are allowed.

DECISION:

The representative's decision dated April 15, 2004, reference 04, is hereby reversed. Ms. McClelland was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf