

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI J ERNST
Claimant

APPEAL NO. 09A-UI-18341-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILDREN'S CENTER FOR THERAPY INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelli Ernst filed an appeal from a representative's decision dated December 3, 2009, reference 02, which denied benefits based on her separation from Children's Center for Therapy, Inc. After due notice was issued, a hearing was held by telephone on January 19, 2010. Ms. Ernst participated personally and was represented by Rachel Zimmerman-Smith, Attorney at Law. The employer participated by David Dellos, Chief Operations Officer; Laura Westemeyer, Administrator; and Shelley Appel, Administrative Supervisor.

ISSUE:

At issue in this matter is whether Ms. Ernst was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ernst was employed by Children's Center for Therapy, Inc. from March 27 until November 12, 2009. She was last employed as a full-time project coordinator. The decision to discharge was prompted by the fact that she disobeyed a directive given by the Chief Operations Officer. She was told on November 11 not to take a diaper changing pad to the employer's North Liberty location. She took the pad to that location anyway and was discharged the next day.

In making the decision to discharge, the employer considered other issues that had arisen with Ms. Ernst. The employer contracted with a firm in October to assist with strategic planning. On October 27, Ms. Ernst was overheard talking with a group of other employees and relating what had happened at her husband's job when strategic planning was performed. She related to the others that people had lost jobs as a result of the planning process. The administrative supervisor told her that she needed to stop making such comments. Ms. Ernst was overheard making similar comments to a different group on November 4. She was told by David Dellos on November 4 to stop making comments about the possibility of people losing jobs.

The employer had also received complaints from parents about Ms. Ernst's lack of professionalism on the telephone. There were also complaints that she was abrasive and pushy when calling on medical offices in attempts to collect on delinquent accounts.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The final conduct that precipitated Ms. Ernst's separation was her failure to follow the instruction given her by Mr. Dellos regarding the diaper changing pad. On the surface, moving a pad from one facility to another would seem to be a trivial matter. However, the fact remains that she was told on November 11 not to take the pad to the North Liberty location but took it there anyway the very same day. It was not the item she took that is significant; it was the act of disobeying instructions that is significant.

There was no emergency that required the pad to be taken that day. She could have found an opportunity to talk with Mr. Dellos about why she, and possibly others, felt the pad should be at North Liberty. Although he may not have been available when she left for the day on November 11, the pad did not have to be taken to North Liberty that day. Mr. Dellos had supervisory authority over her and she did not have the prerogative to take contrary instructions from someone who did not have the same or higher level of authority as he. In short, Ms. Ernst deliberately and intentionally disregarded a clear and reasonable instruction from a supervisor without justification.

Ms. Ernst's lack of regard for directives given her by supervisors is also seen in the fact that she continued to talk about the adverse consequences that followed having a strategic planner come to her husband's job. Her comments had the potential of lowering morale as others might become apprehensive about the security of their jobs. Her comments had the potential of causing others to spend more time talking about the future of the company rather than performing required job functions.

For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established. Ms. Ernst engaged in conduct that was clearly contrary to the employer's standards and interests. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 3, 2009, reference 02, is hereby affirmed. Ms. Ernst was discharged for misconduct in connection with her employment. Benefits are

denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css