

**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**

**DARCIE LONG
1420 GARST AVE
BOONE IA 50036-4923**

**BOYS & GIRLS RESIDENTIAL
TREATMENT CENTER INC
PO BOX 1197
SIOUX CITY IA 51102-1197**

**Appeal Number: 06A-UI-04496-BT
OC: 03/19/06 R: 02
Claimant: Appellant (1)**

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:

Darcie Long (claimant) appealed an unemployment insurance decision dated April 17, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she was placed on disciplinary suspension with Boys & Girls Residential Treatment Center, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2006. The claimant participated in the hearing. The employer participated through Marie Thomas, Human Resources Specialist and Michelle Davis, Regional Coordinator of the Iowa Satellites.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time residential counselor from February 9, 1998 through March 23, 2006, when she was disciplinarily suspended for a founded case of child abuse. She was responsible for providing direct supervision and care of adolescents in the program. Each employee bears full responsibility for the children present on their shifts. On February 20, 2006, another staff member told the claimant a ten-year-old child was going to stay after school and would need to be transported. The child subsequently left the group meeting she was attending and which the claimant was supervising. The claimant was unaware the child left the group and the child went to a separate room where she could lie down. Near the end of the day, the other children were taken home and the claimant's shift got over at 4:30 p.m. No check of the rooms was made so no one else was aware the child was still there. The child woke up later when everyone had left and the building was dark. She accidentally set off the security alarm, which frightened her, so she ran out of the building without her shoes and coat. The child proceeded to go towards Highway 30, flagged down a car, and the police were contacted.

The employer was notified that night and informed all other necessary parties on the following morning. The claimant was issued a written warning on February 22, 2006, and advised that the matter was being investigated by Child Protective Services. The child protective worker visited the employer's facility on March 21, 2006. The claimant was notified by telephone on March 23, 2006, that the abuse had been founded and she would be placed on the Iowa Central Registry for Abuse. The claimant notified the employer and the employer placed her on unpaid suspension awaiting the official results. The employer received written verification on April 16, 2006, that the claimant was placed on the central registry in Iowa for the denial of critical care and failure to provide proper supervision to a minor. The employer discharged the claimant since she was no longer allowed to work in the employer's facility because of her placement on the Iowa Central Registry of Child Abuse.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged after the employer was notified the claimant had been placed on the Iowa Central Registry for Child Abuse and Neglect. She is no longer allowed to work in the employer's facility with adolescents. The acts which resulted in the claimant's placement on this registry occurred on February 20, 2006, when the claimant failed to supervise and provide care for a child who had been left alone. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 17, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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.

sdb/kkf