

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IGNACIA N NUNEZ**  
Claimant

**APPEAL NO: 12A-UI-06440-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 05/06/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 23, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Cathy McKay and Jane Bishop appeared on the employer's behalf. Margarita Pizano interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2008. She worked as a part-time child care provider for Metro Kids. When she started working, the claimant received a handbook that explained employees were to stay at work until all children were picked up by a parent. The employer has a checkout form that parents must sign when they pick up a child. The claimant understood her team leader reviewed the checkout form to make sure all children were picked up before the center closed and employees went home.

In July 2010, the employer suspended the claimant for violating a policy. In July 2011, the claimant did not call or report to work when a family emergency occurred. The claimant talked to Bishop to explain why she had not called or reported to work. In July 2011, instead of discharging the claimant for violating another policy, the employer gave the claimant a written warning on July 12, 2011. The claimant understood her job was in jeopardy if she violated another policy.

On May 2, 2012, when the claimant was with another group of children, a child asked a co-worker if he could sleep. The co-worker allowed the child to sleep in an aisle or hallway that is used for supplies. This is not a designated area for children to take naps. When the claimant's group joined the rest of the children, she had no idea this child was sleeping or where he was sleeping.

The center where the claimant works closes at 5:45 p.m. After checking the center and not seeing any children, the team leader told the claimant and a co-worker they could leave at 5:40 p.m. During her employment, the claimant has never been asked to check the checkout list to make sure all children have been picked up by a parent. At the claimant's center the team leader did this. Believing that all children had been picked up and no one was at the center, the claimant, her team leader and a co-worker left the center at 5:40 p.m.

The parent of the child who was still sleeping came to pick up the child at 5:45 p.m. A custodian looked for the child and the police were contacted. Someone finally found the child asleep in a bean bag chair in the hallway or aisle where supplies are stored.

On May 7, the employer discharged the claimant because she failed to follow the employer's policy that states employees are not to leave children unattended before a parent picks up by a child. Since the claimant had gone through the employer's progressive discipline, the employer discharged her. The team leader and co-worker were also disciplined.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established a business reasons for discharging the claimant. The evidence established that in the years the claimant worked for the employer, she had never been responsible for reviewing the checkout sheet to make sure parents had signed off that they had picked up their child. At the claimant's center, the team leader reviewed the checkout form. Since the claimant had not done this and had not been assigned to review the checkout form, her failure to review this form on May 2 does not amount to work-connected misconduct.

Before the claimant left work, she and a co-worker checked the areas where children are located in the center. Neither the claimant nor a co-worker saw any sleeping child. The

employee, who gave a child permission to sleep in the storage area, did not tell the claimant or the other employee about giving a child permission to sleep in this area. The storage area is not an area children normally go to sleep. The child was basically hidden from view when he slept in a sleeping bag in the storage area.

It is understandable that the parent of the child was extremely distraught and frightened when the center was closed before she picked up her child and then could not immediately find her child. Even though the claimant's job was in jeopardy before May 2, she did not commit work-connected misconduct that day. As of May 6, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 23, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 6, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css