

**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**

**STEPHANIE D SMITH
3416 FAIRLANE DR
DES MOINES IA 50315**

**BEAR BASICS CHILDREN CENTER INC
135 DOUGLAS
DES MOINES IA 50313-4400**

**Appeal Number: 04A-UI-09119-DWT
OC: 07/25/04 R: 02
Claimant: Respondent (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 are 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

STATEMENT OF THE CASE:

Bear Basics Children Center, Inc. (employer) appealed a representative's August 16, 2004 decision (reference 01) that concluded Stephanie D. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Betty Bolin, the director and owner, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked several years for the employer as a lead teacher for two-year olds. On July 21, 2004, the employer's cook, T., was very upset because she did not know where her 17-year old daughter was and thought something might have happened to her. T. left work early, at 2:00 p.m., in an attempt to find her daughter. Later, T. found her daughter staying at the claimant's house. The next morning, July 22, T. came to work to tell the employer she could not work that day because she was very upset with the claimant for not telling her about her daughter. The claimant came to work when T. was still there. The two engaged in a verbal confrontation and T. left upset. After T. left, the employer asked the claimant why she would treat a co-worker like she treated T. and bring trouble to the workplace by hiding T's daughter. The claimant told the employer she did not need to take this from the employer and was going to leave. Although the employer asked the claimant to stay, the claimant walked out and did not return to work.

The claimant established a claim for unemployment insurance benefits during the week of July 25, 2004. She filed claims for the weeks ending July 31 and August 7, 2004. The claimant received her maximum weekly benefit amount of \$194.00 each week she filed a claim.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant voluntarily quit her employment on July 22, 2004, by leaving work early and failing to return. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.5-1.

The law presumes a claimant quits without good cause when she leaves employment after being reprimanded. 871 IAC 24.25(28). The claimant did not leave work until the owner asked her why she treated T. in the manner she had when she knew T. was upset about her missing daughter. Even though the employer asked the claimant to stay and work, the claimant did not. The claimant did not return to work again.

The claimant may have had compelling personal reasons for quitting. The evidence does not establish that the claimant quit for reasons that qualify her to receive unemployment insurance benefits. As of July 25, 2004, the claimant is not qualified to receive unemployment insurance benefits. The employer's account will not be charged.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending July 31 and August 7, 2004. The claimant has been overpaid a total of \$388.00 in benefits she received for this week.

DECISION:

The representative's August 16, 2004 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending July 31 and August 7, 2004. She has been overpaid and must repay \$388.00 in benefits she received for these weeks.

dlw/b