

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY A BUCHHOLZ
Claimant

APPEAL NO. 08A-UI-08392-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WEST DES MOINES CHILD CENTER
Employer

**OC: 08/03/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 12, 2008, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 6, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Woller participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a two-year-old teacher in the employer's learning center from September 17, 2007, to August 6, 2008. The director, Jessica Woller, was the claimant's supervisor.

After work on August 5, 2008, an employee called the claimant and asked whether she would be willing to switch shifts on August 6. The claimant said they would have to get the okay from Woller and offered to call Woller.

The claimant called Woller's number but got no answer. She called again between 5:30 and 6:00 p.m. She again got no answer, so she left a message for Woller asking Woller to call her back because she needed to talk to her before work the next day. The claimant called one more time between 8:00 and 9:00 p.m. but Woller did not answer. She called the other employee back and they decided not to switch shifts because Woller had not approved it. Woller actually got the message later that evening but was irritated by the number of calls the claimant had made and did not call her back.

The claimant reported to work at her scheduled time the next morning. She saw Woller in the kitchen and asked what was up. Woller turned toward and in an angry tone of voice reprimanded the claimant for calling her repeatedly and not leaving any messages. The claimant replied that she had left a message. Woller responded that if had she wanted to talk to the claimant, she would have called her back.

They moved from the kitchen area and into the main room where there were three children present. Both Woller and the claimant were arguing. The claimant began crying because she felt Woller's comments were rude. Woller then told the claimant to pack up her stuff and leave and good luck finding another job. The actual reason for the claimant's discharge was her conduct in calling Woller on August 15 and her conduct on August 16, 2008. There had been times in the past when Woller and the claimant argued. Once back in April 2008, the claimant had told Woller that she was going to yell at a coworker who was late for work, which causes other employees to have to stay beyond their shift. Woller told the claimant that she could not yell at the employee and the claimant did not say anything to the employee.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. No current act of willful and substantial misconduct has been proven in this case. The claimant did nothing wrong in calling her supervisor about a shift change. The claimant's conduct on August 16 was prompted by Woller's confrontational behavior.

DECISION:

The unemployment insurance decision dated September 12, 2008, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw