

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TARA L BURDETTE**  
Claimant

**APPEAL NO. 14A-UI-11122-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDING BLOCKS CHILDCARE &  
PRESCHOOL**  
Employer

**OC: 09/28/14  
Claimant: Respondent (2)**

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Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 15, 2014, reference 01, which concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 14, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Violet Lane participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a teacher in the two-year-old room of the employer's preschool and daycare center from April 21, 2014 to September 29, 2014. She was informed and understood that under the employer's work rules, children were to be cared for with kindness, concern, and respect at all times and physical discipline would be considered abusive. She had been trained on using non-physical measures to handle children.

On September 22 the claimant roughly pushed a child on the shoulders to force him to sit down in violation of the employer's policies for handling children. This was reported to the director, Violet Lane, who reviewed video to verify what had happened. The claimant was discharged on September 29, 2014 for her conduct in mishandling the child on September 22. She had not been disciplined for similar conduct but the employer's policy indicates there is zero tolerance for mishandling children.

The claimant filed for and received a total of \$1064 in unemployment insurance benefits for the weeks between September 28 and November 15, 2014.

Violet Lane participated in the fact-finding interview held on October 14, 2014 and provided the facts about the separation.

**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).

The claimant's violation of a known work rule 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. While the claimant may not have intended to harm the child, her actions in pushing the child's shoulder to force the child to sit were deliberate and violated policy. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. She, therefore, was overpaid \$1064 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

**DECISION:**

The unemployment insurance decision dated October 15, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is required to repay the overpayment of \$1064 and the employer's account will not be charged for benefits

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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