

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN R REGENWETHER**  
Claimant

**APPEAL NO. 11A-UI-13142-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLINTON COMMUNITY SCHOOL DIST**  
Employer

**OC: 08/28/11  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Clinton Community School District (Clinton), filed an appeal from a decision dated September 30, 2011, reference 01. The decision allowed benefits to the claimant, Karen Regenwether. After due notice was issued, a hearing was held by telephone conference call on October 31, 2011. The claimant participated on her own behalf. The employer participated by Human Resources Director Jess Terrell and Principal Bonnie Freitag.

**ISSUE:**

The issue is whether the claimant was suspended for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Karen Regenwether was employed by Clinton from August 27, 1990 as a full-time para-educator. In May 2010 the claimant found another staff member going through her purse and after the conclusion of an investigation of alleged theft, Ms. Regenwether was advised to “keep all money and medication locked up.”

On May 25, 2011, she received a written warning for inappropriate comments on a Facebook page about students which violated certain confidentiality provisions of federal law. That same day Principal Bonnie Freitag was in the classroom where Ms. Regenwether worked. She saw the claimant take medication out of her purse and swallow it in the classroom in front of the students. There was another teacher present who could have been watching the students had the claimant asked to step out to take the meds. The principal took the claimant into the hall and discussed the matter with her and said it would be referred to the human resources department.

This incident was discussed at a meeting with Human Resources Director Jess Terrell, the claimant and a union representative on June 14, 2011, which was the first day all were available due to the fact the school year had ended May 25, 2011. Ms. Regenwether maintained she had no choice but to take the medication in the classroom because she had a migraine headache and had not been allowed to take breaks and there was no other teacher in the room to

supervise the students. Mr. Terrell said he would investigate these assertions but the claimant could be facing suspension or discharge depending on his fact finding.

Mr. Terrell interviewed the other staff members and Ms. Freitag and concluded there was at least one other staff member in the room at the time the claimant had taken the medication and she was allowed to take breaks as needed. The next meeting was not held until August 17, 2011, again because of schedule conflicts during the summer. At that time Mr. Terrell discussed his findings and allowed the claimant to respond. He then said he would notify her.

He recommended to the superintendent that Ms. Regenwether be suspended. She was informed of the suspension on August 22, 2011, which she served from August 23 until September 3, 2011.

Karen Regenwether has received unemployment benefits since filing a claim with an effective date of August 28, 2011.

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

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.

871 IAC 24.32(9) provides:

- (9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by

the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant's suspension was prompted as much by taking medication in front of the students rather than keeping it locked as she had been advised to do, but for giving misleading information to the human resources director during the inquiry. This might be considered a one-time error in judgment had it not been for the disciplinary action regarding the Facebook postings which violated confidentiality provisions. Ms. Regenwether has shown exceeding poor judgment, some of which not only violated statutory provisions but may have jeopardized the students under her care. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The issue of whether the suspension was too distant in time from the infraction has been considered. The administrative law judge determines the employer did discuss the infraction with the claimant as soon as it happened, a meeting was scheduled with union representation and quickly as feasible given that the school year had ended. At that first meeting the claimant was advised of the possible consequences of her conduct if the investigation was concluded adversely to her. This put Ms. Regenwether on notice of the disciplinary consequences in a reasonable period of time after the infraction and the fact the discipline was delayed does not put the matter outside of a current act of misconduct.

**DECISION:**

The unemployment insurance decision dated September 30, 2011, reference 01, is reversed. Karen Regenwether is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css