

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM A WADE
Claimant

APPEAL NO. 10A-UI-11300-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS OF WESTERN IOWA
Employer

**Original Claim: 11/15/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 2, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 29, 2010. The claimant participated personally. The employer participated by Mr. Matt Zima, administrative director; Ms. Bobby Boze, coordinator; and Ms. Stephanie Hathaway, service coordinator.

ISSUE:

At issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kim Wade was employed by Crossroads of Western Iowa from April 12, 2010, until July 1, 2010, when she was discharged from employment. The employer provides services to adults with disabilities. Ms. Wade worked as a full-time links coach, providing supervision to approximately six individuals assigned to her team. Her immediate supervisor was Ms. Bobby Boze.

A decision was made to terminate Ms. Wade after an individual assigned to Ms. Wade's team on July 1, 2010, had wandered off on two occasions. The client, who had a propensity for wandering, entered Ms. Boze's office and remained for approximately 25 minutes without Ms. Wade realizing that the client was unattended. Ms. Boze returned the client to Ms. Wade and made the statement that the client had been unattended for the 25-minute length of time.

Later that day, the same client was observed exiting the facility and entering the company's parking lot. Although the client was soon retrieved by other workers, the employer considered the claimant's failure to closely monitor the client that day to be a violation of job expectations and a decision was made to terminate Ms. Wade from her employment. Ms. Wade had received one previous warning for allowing a client to go home with soiled undergarments. The employer felt that the claimant, in the past, had not been compliant with company rules when

she had failed to immediately report a workers'-compensation-type injury and when the claimant had attempted to perform duties that exceeded her work limitations after the injury.

During the day in question, Ms. Wade had been confronted with a number of situations that had arisen and had left the client in question in the care of other staff members while Ms. Wade attended to what she thought were more pressing issues that had developed. The claimant believed that she had provided sufficient notice to the other staff members that she would temporarily be busy and that the client in question needed to be monitored. Although the claimant was aware that the client in question had a propensity for wandering, she had not become fully acquainted with the client's history or care plans because of other work obligations.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

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.

The evidence in the record establishes that Ms. Wade had been distracted from her normal duties by circumstances that had presented themselves and that the claimant believed needed immediate attention on July 1, 2010. Ms. Wade testified that she had instructed other staff members in the area that she was temporarily leaving and believed that implicit in the statement was the request that the other staff members monitor the activities of the client in question while Ms. Wade attended to a minor emergency situation in another area. The administrative law judge notes that although the employer had the opportunity to directly warn Ms. Wade and to remind her of her obligation to closely monitor the client in question when the first incident occurred on July 1, 2010, the employer did not do so. When the client temporarily left the premises later in the day, a decision was made to terminate Ms. Wade.

The question before the administrative law judge is not whether the employer has a right discharge Ms. Wade for these reasons but whether the discharge is disqualifying under the provisions of the employment security. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant did not intentionally violate the employer's rules or expectations and that the claimant was not sufficiently warned after the first offense before being discharged for the second offense the same day. Based upon the facts of the case and the application of the law, the administrative law judge concludes that misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 2, 2010, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw