

**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**

**MISTI R GALLOWAY  
1813 OLD LWR HWY 6 RD NW #86  
OXFORD IA 52322**

**HAWKEYE AREA COMMUNITY ACTION  
PROGRAM INC  
c/o C MOYER PAYROLL  
PO BOX 490  
HIAWATHA IA 52233-0490**

**Appeal Number: 05A-UI-05985-RT  
OC: 12-19-04 R: 03  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Misti R. Galloway, filed a timely appeal from an unemployment insurance decision dated May 25, 2005, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 23, 2005, with the claimant participating. Kim Miller was available to testify for the claimant but was not called because her testimony would have been repetitive and unnecessary. The administrative law judge attempted to call Colleen Mehaffey to be a witness for the claimant, but the administrative law judge was unable to reach Ms. Mehaffey. Anne Hanson, Human Resources Administrator, and RenElla Crawford, Site Supervisor, participated in the hearing for the employer, Hawkeye Area Community Action Program, Inc. Kerry Minderman was available to testify for the employer but was not called because her testimony would have been repetitive and unnecessary. Employer's Exhibits One, Two and Three were admitted into evidence. The administrative law

judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time early childhood teacher in the employer's Headstart program from February 1, 1995, until she was suspended on April 29, 2005. The claimant's last day of paid work was April 28, 2005, and then she was suspended thereafter. The claimant was formally suspended on May 10, 2005, as shown at Employer's Exhibit One. The claimant was suspended for being arrested for the possession of drugs and having her children removed as shown at Employer's Exhibit Two. The criminal charge of possession of a controlled substance is still pending against the claimant and has not yet been resolved. The claimant's children were removed for approximately 28 days. The Department of Human Services must give its clearance to the employer before the claimant can be re-employed. Also, according to the employer's policy, the claimant would be suspended until she completes a drug assistance or rehabilitation program. The claimant is in such a program, which began June 6, 2005. The employer has policies concerning the possession or use of a controlled substance at worksites and by employees while at work. The employer also has policies that prohibit conduct that would generate outside criticism or adversely affect the agency in terms of public image or services to clients. The employer also requires that employees present a positive image to the people that are served by the employer. The claimant received a copy of these policies but refused to sign an acknowledgement, all as shown at Employer's Exhibit Three.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's suspension from employment was a disqualifying event. It was.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties seem to agree, and the administrative law judge concludes, that the claimant was effectively suspended on April 29, 2005. When the reason for the unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged and the issue of disqualifying misconduct must be resolved. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was suspended for disqualifying misconduct. The evidence establishes that the claimant was arrested for the illegal possession of drugs or controlled substances and that her children were removed for approximately 28 days. The criminal charges are still pending and have not been resolved. The claimant is an early childhood teacher and before she can be permitted to return to her regular teaching duties, the claimant must have Department of Human Services clearance, which has not yet been obtained. Further, according to the employer's policies, the claimant must complete a drug assistance or rehab program. Neither the possession of drugs or controlled substance nor the removal of her children are related to her employment. The claimant denied being in possession of illegal drugs or controlled substances, but conceded that they were in her home. The claimant testified that she did not know they were in her home, but this is not credible. One is presumed to know what is in one's home. The claimant seemed to blame her husband and domestic abuse for these problems. It may be that the claimant's husband and the domestic abuse contributed to the problem, but the administrative law judge must conclude here that the claimant also had some responsibility for the illegal drugs or controlled substances and the treatment of her children. Accordingly, the administrative law judge concludes that the claimant's behavior giving rise to her suspension were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The employer does have policies as set out in Employer's Exhibit Three. It is true that the main drug free workplace policy seems to speak to situations at worksites or while at

work at non-work sites and the claimant stated that she was neither at a work site or working for the employer. The administrative law judge believes, however, that the employer's policies apply to the claimant even when she is not at a work site or at work. Most compellingly, the claimant cannot return to teaching until she is given a clearance by Department of Human Services, and this has not been obtained yet. Accordingly, the administrative law judge concludes that the claimant was suspended for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits or otherwise demonstrates that she is entitled to and eligible for such benefits.

**DECISION:**

The representative's decision dated May 25, 2005, reference 02, is affirmed. The claimant, Misti R. Galloway, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she was suspended for disqualifying misconduct.

sc/kjw/pjs