

**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**

**NICOLE F WINGERT
1917 COUNTRY HOME RD
BRONSON IA 51007**

**COMMUNITY ACTION AGENCY OF
SIOUXLAND
2700 LEECH AVE
SIOUX CITY IA 51106**

**Appeal Number: 05A-UI-06813-CT
OC: 08/08/04 R: 01
Claimant: Respondent (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96/3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Community Action Agency of Siouxland (CAA) filed an appeal from a representative's decision dated June 22, 2005, reference 02, which held that no disqualification would be imposed regarding Nicole Wingert's separation from employment. After due notice was issued, a hearing was held by telephone on July 19, 2005. The employer participated by Scott Orban, Human Resources Director. Exhibits One through Four were admitted on the employer's behalf. Ms. Wingert did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Wingert was employed by CAA from November 28, 2000 until June 8, 2005 as a full-time Head Start teacher. She was discharged because she failed to meet guidelines established by the Federal government for operation of the Head Start program.

Federal regulations require that two home visits be made during the school year for each child. The regulations also require at least two parent-staff conferences during the school year. Teachers are relieved of classroom duties during times they are conducting the required conferences and home visits. The employer's school year runs from September of one year through August of the following year. On January 18, 2005, Ms. Wingert received a written warning because she had failed to complete the required home visits and parent-staff conferences. As of May 26, 2005, seven parent-staff conferences and two home visits had not been completed.

Federal regulations also require the employer to maintain anecdotal notes concerning the progress students are making. The notes are used to develop a curriculum designed to support a range of developmental needs. As of May 26, Ms. Wingert had not made anecdotal notes for ten children since December of 2004. Six of the 19 children in her classroom had ten or fewer anecdotal entries. It was Ms. Wingert's responsibility to either enter the observations herself or make sure her assistant did. She never notified the employer that she was having difficulty meeting her job requirements.

The employer is subject to monitoring by the Federal government for compliance with the Head Start regulations. Head Start programs are required to demonstrate progress and growth in the children served to justify continued funding.

Ms. Wingert filed an additional claim for benefits effective May 29, 2005. She has received \$235.00 in job insurance benefits for each of the five weeks ending July 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wingert was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wingert was discharged for failing to meet the requirements of her job. She had been warned in January of 2005 that her failure to conduct home visits and parent-staff conferences as required might result in her discharge. In spite of the warning, she did not take steps to remedy the deficiencies in her work. Her work as a classroom teacher should not have prevented her from conducting the home visits or conferences as she would be relieved of classroom duties during those occasions. Ms. Wingert did not participate in the hearing to offer legitimate reasons as to why she failed to perform the duties required of her job. She did not notify the employer that she was having problems completing the work so that the employer would have an opportunity to provide assistance. Ms. Wingert had successfully met the requirements of her job in prior years. Therefore, she had demonstrated an ability to meet the employer's standards.

Ms. Wingert's failure to abide by the Federal guidelines under which the Head Start program operates had the potential of jeopardizing the employer's continued funding for the program. She knew from the warning in January of 2005 that her failures were contrary to the employer's standards and expectations. Her conduct constituted a substantial disregard for the employer's interest in maintaining a viable Head Start program. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Wingert has received job insurance benefits since filing her additional claim effective May 29, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 22, 2005, reference 02, is hereby reversed. Ms. Wingert was discharged by CAA for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Wingert has been overpaid \$1,175.00 in job insurance benefits.

cfc/kjw