

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WHITTNEY J LAMB

Claimant

APPEAL NO. 13A-UI-02543-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TINKER TOTS PRESCHOOL INC

Employer

OC: 01/20/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 20, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 28, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Katie Purdy participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as an infant teacher for the employer from October 12, 2012, to January 3, 2013. Under the employer's work rules, during the 90-day probation, employees were allowed three absences.

The claimant received a warning after she was absent due to illness on October 25 and 26 and due to a sick child on October 29. She properly notified the employer about the absences.

She was sick and unable to work on December 6 and 7. She properly notified the employer about the absences and provided a doctor's excuse covering the absences.

The claimant was absence with proper notice to the employer on January 4, 2013, because her son was diagnosed with strep throat and her doctor indicated that he might be contagious.

The employer discharged the claimant due to excessive absenteeism.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant's absences were due to legitimate medical reasons and were properly reported to the employer.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated February 20, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll