

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL WILSON**

Claimant

**APPEAL NO: 10A-UI-09413-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARTENSDALE ST MARYS  
COMMUNITY SCHOOL DISTRICT**

Employer

**OC: 05-23-10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 22, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 18, 2010. The claimant participated in the hearing with Attorney Eric Updegraff. Tom Wood, Elementary School Principal; Jen Pribil, Elementary School Counselor; Jill Gavin, Business Manager; and Jim Verlengia, Interim Superintendent, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time teacher associate for Martensdale St. Marys Community School District from August 24, 2005 to May 27, 2010. On February 24, 2010, the claimant's foster child notified the school counselor the claimant hit her with a hangar the week before. The claimant had told the counselor there was an incident earlier and asked the counselor to speak to the child. The counselor did not involve the State because there were no marks and she did not believe there was enough evidence to report the situation as possible child abuse. On March 28, 2010, the claimant notified Elementary Principal Tom Wood that she hit one of her foster children and believed she would be placed on the child abuse registry. Mr. Wood told her they would wait to see what happened with DHS. Sometime in May 2010, prior to May 19, 2010, the claimant informed Mr. Wood she was placed on the child abuse registry for a founded report. On May 19, 2010, Mr. Wood told the claimant the school district would not be renewing her contract for the following school year but he let her finish the last eight days of school as a favor to her and because she was under supervision and did not work directly with that child.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant and her foster child reported the incident involving the claimant hitting the child with a hangar to the school counselor in February 2010 and then the claimant notified Mr. Wood March 28, 2010,

about the situation and that she believed she would be placed on the child abuse registry. The counselor, who is a mandatory reporter, did not report the incident to the State because there were no marks on the child and she did not feel there was enough evidence to make a report of suspected child abuse. Mr. Wood did not take any action against the claimant when he learned of the incident by at least March 28, 2010, independent of any action the State might have taken in the future. The incident was either misconduct related to her employment at the time the claimant reported it to the employer or it was not, regardless of what the State may or may not have concluded. Consequently, because the employer did not take any action with regard to the claimant's employment at the time it learned of the incident, the administrative law judge must conclude this was not a current act of misconduct, without reaching the question of whether the situation was actually work-related misconduct. Therefore, benefits must be allowed.

**DECISION:**

The June 22, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css