

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE M KROUSE
Claimant

APPEAL NO. 10A-UI-02584-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

OC: 01/17/10
Claimant: Appellant (2)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 18, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2010. Claimant participated. The claimant was represented by Rachel Suhrbier, Attorney at Law. Employer elected not to participate in the hearing. The record consists of the testimony of Catherine Krouse.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as the lead teacher in the infant transition room in the early childhood center. She was terminated on January 18, 2010.

The incident that led to the claimant's termination began on January 13, 2010. A parent, who had another child enrolled at the center, asked to drop off a second child in the claimant's room. Drop-ins are permitted and normally the decision to allow a drop-in is made by the office. No one was present in the office on January 13, 2010, and so the claimant decided to allow the drop-in. All of the necessary information was given, including a record of the child's immunizations and emergency contacts.

A disagreement ensued between the claimant and the employer concerning this drop-in. The claimant was told on January 15, 2010, that she must sign a reprimand form and that if she did not sign the form, she would be terminated and would not be permitted to collect unemployment insurance benefits. There was also a disagreement between the claimant and the employer over the claimant contacting the parent of the drop-in child. The claimant felt she did nothing wrong in making this contact, but the employer felt the claimant had violated its protocol.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The employer elected not to participate in the hearing. The claimant testified that she and her employer disagreed over the way a drop-in child was handled by the claimant. The claimant stated that she followed all procedures concerning this child. At best the claimant may have committed an error of judgment or discretion either in accepting the child or contacting the parent. An error of judgment or discretion in an isolated instance is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 18, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css