

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E PERARDI
Claimant

APPEAL NO. 08A-UI-09468-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**Original Claim: 09/14/08
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Donald E. Perardi filed a timely appeal from an unemployment insurance decision dated October 7, 2008, reference 02, that disqualified him for benefits. After due notice was issued, proceedings were held in Dubuque, Iowa, on December 3, 2008, by Administrative Law Judge James E. Timberland. Mr. Perardi participated in that hearing. Julie Heiderscheidt and Shannon Hagensteen were present for the employer. After proceedings concerning the claimant's subpoena requests, further proceedings in the matter were held in Dubuque on June 18, 2009. The witness subpoenaed by Mr. Perardi participated in this hearing, as did Julia Schaefer-Furne, an employee of the employer whose presence had been requested by Mr. Perardi. The record in this case also includes exhibits admitted into the record during both sessions.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all matters of record, the administrative law judge finds: Donald E. Perardi was employed as a teacher for Hillcrest Family Services from August 17, 2006 until he was discharged on September 15, 2008. The final incident leading to the discharge occurred on September 11, 2008. A student was arguing with Mr. Perardi about the next day's assignment, which Mr. Perardi had written on the board behind his desk. During the argument, Mr. Perardi grabbed hold of the student's wrist and pulled the student approximately two to three feet so that the student was directly facing the board. Company policy prohibits physical contact such as this.

At the time of this incident, Mr. Perardi was on a final warning because of an incident that had occurred earlier in the month. A new student had entered his class that day. The student's records had not been provided to Mr. Perardi in advance. In front of the other members of the class, Mr. Perardi asked a series of question of the student, including questions of present drug and alcohol use and any mental health issues she may be experiencing. Based upon these incidents and prior warnings, the employer discharged Mr. Perardi.

The employer is a human services agency. Its clients include adolescents who, for various reasons, are obtaining their education outside of traditional school districts. The employer has rather specific policies as to the treatment of these clients, as well as specific policies concerning confidentiality of personal information. Mr. Perardi knew or reasonably should have known of these policies.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes whether the claimant was discharged for misconduct in connection with his employment. It does.

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.

Mr. Perardi acknowledged the physical contact that was the basis of the final incident leading to discharge. His testimony that the student volunteered personal information was effectively refuted by the witness that Mr. Perardi called. The administrative law judge concludes that misconduct has been established by the evidence in this record. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 7, 2008, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

srs/kjw