

**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**

**TANYA S STIENEKE  
722 W MAIN ST  
CHEROKEE IA 51012**

**GINGERBREAD HOUSE CHILD  
DEVELOPMENT CENTER INC  
PO BOX 161  
STORM LAKE IA 50588-0161**

**Appeal Number: 06A-UI-06803-LT  
OC: 06-04-06 R: 01  
Claimant: Appellant (1)**

**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)

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the June 22, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 25, 2006. Claimant participated. Her named witnesses had no information about employer's allegations regarding the separation and were not called. Employer participated through Andrea Hogrefe, Marilyn Nelsen and Katie Crampton. The issue is whether claimant was discharged for reasons related to job misconduct. The administrative law judge took judicial notice of the administrative record.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time teacher's aide from February 15, 2006 through May 25, 2006 when she was discharged. Iowa Central students Brittany Melby and Melanie Persune reported to

Marilyn Nelsen and a board member on May 24 and gave written reports to Andrea Hogrefe that claimant talked about alcohol and weekend activities in front of one and two-year old children, told them to "go away", called them "ugly", told them they smelled and needed to take a bath, ate food in front of children after two prior warnings, withheld food, ignored certain children, physically pushed children away and threw things across the room to get their attention.

Marilyn Nelsen, programming director, had met with claimant and asked for improvement on March 7, 2006 after an initial period of enthusiasm and interaction with the children and subsequent passive behavior when she "just sat there." On March 16 a staff member reported a lot of crying in claimant's assigned room. When Nelsen investigated, she picked up a one-year-old and instructed claimant she must pick up a crying child and try to comfort him. Claimant was not receptive and was argumentative with Nelsen when instructed how to conduct herself around and with the children.

Andrea Hogrefe met with claimant on May 11, 2006 for a performance evaluation and discussed the requirement that she attend training as she had not in the past, she must work with other staff, interact with children, give appropriate and positive verbal communication, use a kind and gentle tone of voice, not talk about personal issues in front of children (drinking, nightlife), interact with children at mealtime (allowing them to eat what and as much as they want without a derogatory tone or comments), and eat with children but not in front of them.

Hogrefe, acting in response to complaints and her own observations, warned her not to eat in the classroom on May 15, 2006. On May 22, Hogrefe again warned her about consuming pop in the classroom. On May 23, Hogrefe warned her to use appropriate tone and language and not yell at the children. Hogrefe and Nelsen observed that claimant changed behavior in front of Nelsen and then would revert to yelling at the children as she was heard through Nelsen's office, which shared a wall and observed while walking by the classroom window.

Katie Crampton was a witness to the May 23 meeting and also observed claimant's "attitude that she was not doing anything wrong." Complaints also came from Kristen Vogel about claimant and Jessie Aberson, lead teacher, yelling at the children instead of getting up to redirect them.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Since the complaints were brought by multiple independent parties, her wholesale denial of any alleged misconduct after the warning is incredible. Claimant's continued verbal abuse of the children and eating in front of them after having been warned is evidence of her willful behavior and is misconduct. Benefits are denied.

DECISION:

The June 22, 2006, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related 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 benefit amount, provided she is otherwise eligible.

dml/pjs