

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J HOLMES
Claimant

APPEAL NO. 12A-UI-01017-SWT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

OLIN DAYCARE INC
Employer

**OC: 12/18/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 17, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 23, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Tim Holmes. Amy Bunn participated in the hearing on behalf of the employer. Exhibit A-1 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a caregiver for the employer from April 11, 2008, to December 6, 2011. She was informed and understood that under the employer's work rules, information about a child's medical condition or conduct was confidential and was not to be disclosed to persons other than staff members and parents or guardians.

On November 21, 2011, the claimant violated the confidentiality policy when she brought an infant out of the infant room to an area where other staff members were at. She asked one of the other staff members to watch the baby for a while because he had been fussing and crying a lot. There was a man in the facility who was not a staff member or related to the baby who overheard the comment. The employer had also received complaints from parents about the claimant stating while they were in the room that a child cries all the time or "welcome to the nut house." The director warned the claimant that she was not to talk about any child in the presence of another parent or guardian and needed to show a positive attitude with the children and other staff.

On December 16, 2011, the claimant was dealing with a child who was crying and seemed ill. The claimant came out of the infant room and called the parent on the lobby phone. She told the parent that the child had been crying and was not feeling well and asked the parent to pick up the child. The call was made while a member of the community was in the lobby delivering

some toys. The claimant could have made the call using a phone in an area that was private. The director witnessed this and pulled the claimant aside to warn her that she had violated the confidentiality policy. The claimant was upset about being reprimanded for this.

Later that day, the claimant made a comment to a parent who was picking up his child that she was looking for another job because she was tired of getting chewed out. The parent was on the board for a daycare facility in another town that was going to be opening up. The claimant asked the parent if they were hiring.

When the director learned about the comments made by the claimant to the parent, the employer decided to discharge the claimant for violating confidentiality rules and displaying a negative attitude about the center. She was informed on December 19, 2011, that her employment was terminated.

A decision disqualifying the claimant from unemployment insurance benefits was mailed to the claimant's last known address of record on January 17, 2012. The claimant mailed her letter of appeal from the decision at the Olin, Iowa, post office on January 27. The letter was postmarked in Cedar Rapids, Iowa, on January 28.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The date of mailing of the appeal is presumed to be the postmark date, but the presumption can be overcome by credible evidence to the contrary. In this case, the fact the letter was postmarked in Cedar Rapids on January 28, demonstrates that it was probably mailed on or before the deadline of January 27, 2012. The appeal is deemed timely.

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 next 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 claimant's conduct on December 16, 2011, was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant had been warned about the employer's confidentiality rules a month earlier in a similar situation. I do not believe the claimant was kidding with the parent when she told him she was going to look for another job because she was tired of getting chewed out. This was not something that she should have shared with a parent. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 17, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw/kjw