

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

RAMONA M ISETON
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OSKALOOSA IA 52577

IMAGINE THE POSSIBILITIES INC
1701 – 3RD AVE #6
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Appeal Number: 04A-UI-00147-HT
OC: 11/03/03 R: 03
Claimant: Appellant (2)

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)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Ramona Iseton, filed an appeal from a decision dated December 24, 2003, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 28, 2004. The claimant participated on her own behalf. The employer, Imagine The Possibilities, Inc. (ITP), participated by Administrator Kevin Brown and Director of Human Resources Wendy Van Roekel.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ramona Iseton was employed by ITP from April 4, 2001 until December 2, 2003. She was a full-time instructor.

The claimant had received written warnings during the course of her employment, the last one on May 19, 2003, for not following the instructions given to her by Administrator Kevin Brown regarding a prior disciplinary action taken against her. The warning notified her that her job was in jeopardy if there were any further violations of policy.

On November 17, 2003, Mr. Brown received a report from other staff members that the claimant had left a particular consumer unattended on the bus. This consumer is not to be left unattended at any time and the staff member assigned to her must not leave her side until another staff member takes over. The report alleged the claimant walked off the bus before her replacement, Amy Westercamp, was on the bus and standing by the consumer. The administrator interviewed the witnesses and Ms. Westercamp and the claimant on November 20, 2003. The claimant maintained that she did not leave the bus until Ms. Westercamp was standing by the consumer.

The employer discharged the claimant on December 2, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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, (8) 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).

(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 proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The claimant has denied leaving the consumer on the bus without another staff member in immediate attendance. The employer did not provide Ms. Westercamp's testimony at the hearing, even though she is still an employee of the facility. Mr. Brown made reference to a statement written by Ms. Westercamp, but that statement was not included in any of the proposed exhibits forwarded by the employer. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes the employer has not rebutted the claimant's denial with sufficient evidence and has not met its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of December 24, 2003, reference 01, is reversed. Ramona Iseton is qualified for benefits, provided she is otherwise eligible.

bgh/b