

**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**

**CHRISTINA L COLE  
320 S ALTA AVE  
NEW HAMPTON IA 50659-1406**

**COMMUNITY CARE INC  
108 E INDUSTRIAL ST  
DEWITT IA 52742**

**Appeal Number: 06A-UI-05717-JTT  
OC: 04/30/06 R: 03  
Claimant: Respondent (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Community Care filed a timely appeal from the May 18, 2006, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held on June 20, 2006. Claimant Christina Cole participated. Human Resources Director Carol Wells represented the employer and presented additional testimony through Heritage Residential Center Administrator Jess Thronson. Exhibits One through Three and Five through Seven were received into evidence. The administrative law judge took official notice of Agency records regarding benefits disbursed to Ms. Cole.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christina Cole was employed by Community Care as a full-time rehabilitation associate at Heritage

Residential Center from April 18, 2005 until May 1, 2006, when Heritage Residential Center Administrator Jess Thronson and Executive Director Benjamin Wright discharged her.

The incident that prompted the discharge occurred on Saturday, April 29. Ms. Cole was scheduled to work at 2:45 p.m. Ms. Cole's husband had left for his work at 2:00 p.m. The couple has a four-year-old daughter and each had assumed the other had made arrangements for weekend childcare. Ms. Cole contacted her mother at 2:30 p.m. to see whether her mother could care for the child. Ms. Cole's mother was 20 to 30 minutes away, but indicated she would collect the child as soon as possible. Ms. Cole made arrangements with her mother to collect her child at Ms. Cole's workplace and took her child with her to the workplace. Ms. Cole was one of two staff members charged with supervising and providing care to approximately three dozen mentally ill and mentally retarded clients. The mentally ill clients suffer from such diagnoses as schizophrenia, paranoia and depression. After Ms. Cole clocked in for her shift with her child in tow, a co-worker asked Ms. Cole whether she was concerned that she would get in trouble for bringing her children to work. Ms. Cole indicated no, and asserted that she had observed other staff bring their child to the workplace. A few minutes later, Ms. Cole left the workplace to take three or four clients to McDonald's for coffee. Ms. Cole left her child in the care of her co-worker, who was at that point already responsible for supervising approximately 33 clients. After Ms. Cole had been gone 20 minutes and Ms. Cole's mother had still not arrived to collect the child, the co-worker contacted Ms. Cole and told her that she needed to return to the workplace. Ms. Cole did return.

The incident first came to the attention of Ms. Thronson on May 1, when a resident reported that Ms. Cole had brought her child to work on April 29, had made arrangements for the client to "baby-sit" the child and then failed to pay for the client's services. Ms. Thronson investigated the matter the same day and spoke with the other staff member who had been on duty on April 29. The staff member did not confirm that babysitting arrangement, but confirmed the facts outlined above. Ms. Thronson then spoke with the Executive Director and the two made the decision to discharge Ms. Cole. Ms. Cole was scheduled to arrive for work at 2:45 p.m. When Ms. Cole arrived, Ms. Thronson spoke with Ms. Cole and Ms. Cole confirmed the facts outlined above. Ms. Thronson proceeded to discharge Ms. Cole for putting her child at risk, exposing the employer to liability and interfering with the operations of the residential center.

Ms. Cole's only prior reprimand had been on August 4, 2005, when Ms. Thronson reprimanded her for allowing her husband and child to visit the facility while she was on duty.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Cole was discharged for misconduct in connection with the employment that would disqualify her for unemployment insurance benefits.

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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record clearly establishes that Ms. Cole exercised poor judgment by bringing her child to the residential center. Ms. Cole then exercised horrible judgment by leaving her child in the care of a co-worker while Ms. Cole took a few clients for coffee. Ms. Cole's conduct in connection with these events was both careless and horribly negligent, but was not the result of a willful or intentional disregard of the employer's interests. The evidence indicates that Ms. Cole's one prior reprimand was based on another error in judgment on the part of Ms. Cole, but does not demonstrate carelessness or negligence. While it was clearly within the employer's discretion to discharge Ms. Cole from employment based on this instance of extremely poor judgment, the evidence in the record does not demonstrate a *pattern* of carelessness and/or negligence sufficiently recurrent to constitute substantial misconduct such as would disqualify Ms. Cole for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Cole was discharged for no disqualifying reason. Accordingly, Ms. Cole is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated May 18, 2006, reference 06, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible.

jt/cs