

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA F SAM
Claimant

APPEAL NO: 14A-UI-12110-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JUNGLE FRIENDS LLC
Employer

OC: 11/02/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Jungle Friends, L.L.C. (employer) appealed a representative's November 19, 2014 (reference 01) decision that concluded Latoya F. Sam (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Linda Brotherton-Laird appeared on the employer's behalf and presented testimony from one other witness, Mary Dalton. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Overpayment subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 2014. She worked full time as a co-lead in the toddler room at the employer's child care center. Her last day of work was October 30, 2014. The employer discharged her on that date. The stated reason for the discharge was repeated confrontations with other employees in front of children in the classroom after prior warning.

The claimant had been given at least one prior verbal warning, a written warning, and a final written warning for having confrontations with other employees in the classroom in front of the children. The final warning was issued on October 17, 2014 and advised her that the next time there was an issue it would result in discharge.

The claimant's child also was cared for at the child care center. At about 2:30 p.m. on October 30 the owner/director, Brotherton-Laird, asked the on-site supervisor, Dalton, to cover the claimant's room and send the claimant to the office for a discussion; Dalton did so. When the claimant came to the office Brotherton-Laird advised the claimant that her child had been written up for some behavior problems and was being placed on a behavior plan. Before the claimant left the office, Brotherton-Laird advised the claimant that to avoid the type of situation that had arisen in the past for which she had been written up, that particularly if she was upset about the situation with her child, she needed to remember that she was not to talk about that situation with Dalton in the classroom.

The claimant came back to the classroom at about 3:00 p.m. and she was very upset. While she did not raise her voice, she was very agitated and was waving her arms around, accusing Dalton of knowing why the claimant was being sent to the office and accusing Dalton and other employees of attacking her child and being unfair. She went on in this manner for about five minutes before Dalton could get away. The children and another teacher were all in the classroom during the claimant's confrontation of Dalton.

As a result of this incident after the prior warnings for the same type of conduct, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective November 2, 2014. A fact-finding interview was held with a Claims Representative at 2:05 p.m. on November 18, 2014. The employer, through Brotherton-Laird, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$156.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's confrontation of Dalton after the prior warnings including a final written warning as well as a reminder only minutes before the confrontation shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's November 19, 2014 (reference 01) decision is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 30, 2014. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$156; which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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