

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNY L TOMLINSON
Claimant

APPEAL NO. 09A-UI-11975-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENDER STARTS LEARNING CENTER
Employer

**Original Claim: 07/19/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jenny Tomlinson filed an appeal from a representative's decision dated August 17, 2009, reference 01, which denied benefits based on her separation from Tender Starts Learning Center. After due notice was issued, a hearing was held by telephone on September 3, 2009. Ms. Tomlinson participated personally and offered additional testimony from Samantha Graham. The employer participated by Mark Schelle, Owner/Director, and Mindy Garcia, Assistant Director.

ISSUE:

At issue in this matter is whether Ms. Tomlinson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tomlinson was employed by Tender Starts from January 2, 2008 until July 17, 2009 as a full-time assistant teacher. She was discharged for repeated tardiness and for providing false information to the employer. The employer did not have available a record of the specific dates on which Ms. Tomlinson had been late for work.

Ms. Tomlinson's daughter attended Tender Starts. On July 11, 2009, Ms. Tomlinson discovered that her daughter had head lice. When questioned by the employer on July 13, she denied knowing of the head lice. On July 14, she brought her daughter to Tender Starts and was sent home because of head lice. She was told not to return until the problem was resolved. She was notified of her discharge before she could attempt to return to work.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although tardiness was alleged as part of the reason for

Ms. Tomlinson's discharge, the employer failed to present sufficient detailed evidence to establish excessive unexcused tardiness.

The other reason for the discharge was the fact that Ms. Tomlinson deliberately misrepresented the situation regarding head lice. She knew on July 11 that her daughter had had lice but denied it when questioned by the employer on July 13. Moreover, she brought her daughter to the learning center on July 14 in spite of the fact that it had only been three days since she treated her daughter for the problem. Ms. Tomlinson's false statement to the employer prevented the employer from giving timely notice to others regarding the presence of head lice so that immediate steps could be taken.

The employer operates a child care facility where children are usually in close contact as they play together. The spread of head lice had the potential of causing parents to remove their children from Tender Starts. Ms. Tomlinson knew or should have known that having a child with head lice in a child care facility was contrary to the employer's interests and standards. Therefore, she had a duty to notify the employer of her daughter's condition. Furthermore, she owed the employer the duty of honesty when specifically questioned on the issue.

After considering all of the evidence, the administrative law judge concludes that Ms. Tomlinson's deliberately false statement to the employer constituted substantial misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 17, 2009, reference 01, is hereby affirmed. Ms. Tomlinson was discharged for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw