

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KARA M SHOEMAKER

Claimant

APPEAL NO: 19A-UI-08578-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCNEAL ENTERPRISES LLC SERIES 3

Employer

OC: 06/30/19

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 25, 2019, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 22, 2019. The claimant participated in the hearing. Becky McNeal, Owner; Lyndsay Hobbs, Director; and Taylor Tanner, Onsite Supervisor; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead teacher for McNeal Enterprises from April 29, 2019 to October 11, 2019. She was discharged for yelling and slamming things October 10, 2019, after being denied a requested day off.

The claimant is the lead teacher in the two-year old room. She requested October 14, 2019, off but did not give the employer the required two-week notice and the employer did not have enough employees to cover her shift that day. The employer denied the claimant's request and she learned of the denial October 10, 2019. She pulled the notice off the wall in the office and crumpled or ripped it up and loudly said, "This is bogus." She picked up a ceramic bowl containing markers and went to her classroom where the director and assistant director heard her slam the bowl on the counter from the office approximately 30 feet away. The assistant director went to the claimant's room and told her to be quiet and the claimant repeated, "This is bogus." The assistant director left the claimant's classroom but other staff members reported the claimant was slamming cupboards and slammed a door and was making a great deal of noise. It was naptime and the children were sleeping. The claimant's actions woke some of the children. The assistant director returned to the claimant's classroom and asked her to leave for the day and calm down. The claimant asked if she should return the next day and the assistant director told her to go home. As the claimant left she said, "I'm fired. Go ask (the director) if I'm fired." The director told the other employees she was not going to discuss the claimant's

employment with them or through text messages. The claimant texted the director and the director said she wanted to meet with the claimant the following day to discuss the matter. On October 11, 2019, the employer explained why the claimant's time off request was denied and the claimant admitted she acted inappropriately and apologized. The employer said the claimant was insubordinate and terminated her employment. The claimant never received any warnings during her employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful

wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

When the employer met with the claimant October 11, 2019, she agreed her behavior October 10, 2019, was wrong and apologized to the employer. She was upset and angry and let her emotions dictate her behavior. While the claimant's actions were inappropriate, unprofessional and insubordinate, this was an isolated incident of misconduct as the claimant had not received any previous warnings. As such, her behavior does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 25, 2019, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn