

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL J MULLINS
Claimant

APPEAL NO. 07A-UI-09639-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
Employer

**OC: 09/09/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 8, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 30, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Chris Hunter participated in the hearing on behalf of the employer with witnesses, Tiffany Kahn and Mike Holker.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a dorm parent from January 11, 2006, to September 12, 2007. Under the employer student discipline program, students are issued written consequences for misbehavior. The students are given the option of self-correcting their behavior (admitting to it and explaining how they will correct it), or receiving a staffed consequence (the staff imposes the consequence), which results in an entry in the student's record.

The claimant received a warning in April 2006 for getting involved in power struggles with students and not treating students with respect. On April 2, 2007, the claimant was suspended for three days for issuing an excessive number of consequences to a student, which were all staff corrected. He was counseled that when dealing with an unruly student, he was to try to get other staff involved to de-escalate the situation. He was counseled in June 2007 about fully completing the staffed consequences form. On August 29, 2007, the claimant was suspended for throwing a water bottle during physical education. The claimant had tossed the water bottle toward the water fountain because he wanted someone to fill it so he could have a drink. He was staffing a door and was not allowed to leave his post. He was not throwing the bottle at anyone.

On September 11, 2007, the claimant was responsible for supervising a student who was unruly and disruptive. Staff have had problems controlling the student's conduct in the past. During

the course of the claimant's shift, he observed the student misbehaving and violating the academy rules. He issued 33 consequences based on the student's behavior. Each was based on a rule violation he observed. He gave the student the option of self-correcting the violations but ended up with 17 staffed consequences, which management considered excessive. Other staff have issued up to 33 consequents to a student. The claimant used the staff available to assist him in curbing the student's lashing out.

The claimant was having problems with pain associated with a chronic kidney stone problem that he had. This affected his conduct on September 11, 2007. There was a staff meeting later in the day. During the staff meeting the claimant vented about being singled out for discipline and used profanity. He also accidentally tipped over a chair. The profanity was not directed at anyone and the profanity used by the claimant was common in staff meetings. He was unaware of anyone who had been disciplined for using profanity in a staff meeting.

The employer discharged the claimant for inappropriate and unproductive conduct based on the excessive consequences issued on September 11 and his comments and behavior during the staff meeting, along with his past disciplinary record. There was some testimony about the claimant eating candy on September 12, but the preponderance of the evidence suggests this was not why the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

871 IAC 24.32(8) provides:

(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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

No current act of work-connected misconduct has been proven in this case. The preponderance of the evidence fails to show the claimant threw a chair, and in fact supports his testimony that it was tipped over accidentally. Venting about being disciplined is not misconduct and the profanity used by the claimant was common in staff meetings. It is difficult to see how misconduct is proven based on the claimant observing misbehavior warranting correction and issuing a consequence based on that misbehavior. In terms of having too many staffed consequences, it does not seem out of line for a recalcitrant student who is lashing out to be unwilling to self correct his conduct. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated October 8, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs