

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA J LINDLEY**  
Claimant

**APPEAL NO. 11A-UI-13217-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL CITY  
COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 08/28/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated September 26, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on October 31, 2011. The claimant participated personally. Although duly notified, the employer did not participate.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge finds: Rebecca Lindley was employed by Central City Community School District from August 2010 until June 4, 2011, when she was given the option of resigning or being discharged. Ms. Lindley worked as a full-time fifth- and sixth-grade language arts teacher and was paid by salary. Her immediate supervisor was the facility principal, Ms. Devore.

On June 4, 2011, Ms. Lindley was informed by the district's superintendent that she was going to be terminated from employment. The superintendent offered Ms. Lindley the option of resigning in lieu of being discharged. The superintendent cited no reason for the claimant's discharge other than saying that the school district thought the claimant was "not a good fit."

During the most recent school term, Ms. Lindley had been absent from work on more than one occasion due to medical issues related to her pregnancy. On one or more occasion, the claimant was not able to give advance notice of her impending absences, due to the emergency nature of the medical issues. The claimant had received good evaluations and had not been warned that her employment was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

In cases where the claimant is given the option of resigning rather than being discharged, the separation is considered to be a discharge and the employer has the burden of proof. 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 may not necessarily be serious enough to warrant the denial of unemployment benefits. 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 App. 1992).

While past acts can be used to determine a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination from employment must be based upon a current act. See 871 IAC 24.32(8). Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in this case establishes the claimant's employment came to an end when she was given the option of resigning or being terminated from employment on June 4, 2011. The claimant elected to resign in order to protect her employment history. The evidence is clear, however, that the employer would not have retained the claimant as an employee had she not elected to resign in the face of being discharged. Ms. Lindley testified that, at the time of discharge, she was told that she was going to be separated from employment because she was "not a good fit." The claimant testified that she had been absent on occasion earlier in the school year for medical reasons associated with her pregnancy and that on one or more occasions she was unable to provide advance notice of her impending absence due to the emergency nature of the medical issues at the time. It appears the claimant was allowed to return to work and the employer allowed the claimant to continue in employment until the end of the school year, at which time the claimant was informed of the district's decision to "terminate" her from employment.

Based upon the evidence in the record, the administrative law judge must conclude that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct at the time of job separation. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 26, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw