

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAIMANT

EMPLOYER

APPEAL 15A-UI-06795-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/15

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination they were discharged due to a violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2015. The claimant participated on her own behalf. The employer participated through its Chief Executive Officer (CEO) and was represented by a third party representative. Claimant's Exhibits A through F and were received and admitted into the record without objection. Claimant's Exhibit G was received but not admitted into the record at the agreement of the parties. Claimant's Exhibits H through K were received and admitted into the record over the employer's objection based on relevance. Employer's Exhibits 1 and 2 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a supervisor beginning November 5, 2015, and was separated from employment on June 5, 2015, when she was terminated. The claimant reported to the CEO and was responsible for managing other employees who cared for children.

In April 2015, the claimant was called to handle a situation in a classroom. A young child had punched two teachers and gotten into a wrestling match with another student. After the wrestling match the students were inspected for injuries and the child had one scratch on the inside of its arm. The claimant removed the child from the room. She brought the child down to her office and tried to use the tools she had been given to calm the situation. The child continued to act out. The child ran out of the claimant's office down a 100-foot hallway toward the back doors which led to the fenced-in playground and the delivery driveway. Two-thirds of the way down the hallway, the claimant grabbed the child's shoulder. The child fell to the ground and began crying. As a result of the claimant's conduct, the child had visible marks on

its shoulder and neck area. The parents were notified. Additional marks were then discovered on the child's torso and body including bruises that appeared to have been created by three fingers. The claimant was suspended and, ultimately, terminated for the incident.

The employer has policies outlining how to handle different difficult situations with the students. The policy states the employees will not discipline students by striking, slapping, or any punishment which causes physical discomfort. The policy also provides a process for when a child leaves an area without permission. According to the policy, the employees are required to keep the child within sight and hearing distance and to notify the proper authorities if more than ten minutes passes or they feel the child is in danger.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

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).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. The employer is charged with protecting the safety of the students in its care. It has created policies to protect its staff and students. The claimant violated those policies when she grabbed the shoulder of a student causing physical discomfort.

The claimant’s argument that she used physical force for the safety of the child and other students is not persuasive. She explained that she feared the child would hurt other children or parents as it was dismissal time and she was afraid for the child’s safety had it escaped out the double doors at the back of the hallway. At the time the child ran out of her office, there were no parents or children in the hallway. The child still had approximately 30 feet in the hallway when the claimant caught up with it before reaching the back doors. She would have been able to stay with the child had it gone out the back doors. She had additional time to use the non-physical methods required by the employer to de-escalate the situation.

The claimant has also argued that employees in similar situations were given warnings and job coaching in lieu of termination. This argument is also not persuasive as she is the supervisor of the employees and not just an employee. As the supervisor, she is held to a higher standard of conduct.

The employer has presented substantial and credible evidence that claimant was acting against its best interests and the safety of the students with her conduct on April 21, 2015. The claimant’s conduct was disqualifying misconduct even without prior warning.

DECISION:

The June 9, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs