

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CHANTELL S HOSKINS**  
Claimant

**APPEAL NO. 19A-UI-04849-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEAR BASICS CHILDREN CENTER INC**  
Employer

**OC: 05/12/19**  
**Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 6, 2019, reference 01, decision that allowed benefits to the claimant provided she met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 30, 2019 for no disqualifying reason. After due notice was issued, a hearing was started on July 10, 2019 and completed on July 11, 2019. Claimant Chantell Hoskins participated. Blaine Bolin represented the employer and presented additional testimony through Tracey Bolin and Ashley Rasky. The administrative law judge was unable to take testimony from claimant witness Marcus Washington due to Mr. Washington's aggressive and disruptive speech and behavior. The testimony from Mr. Washington would have duplicated testimony provided by the claimant. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 10 into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a licensed daycare and preschool. Chantell Hoskins was employed by Bear Basics Children Center, Inc. as the full-time lead teacher in the two-year-old room and as a center supervisor until April 30, 2019, when the employer discharged her from the employment. The discharge occurred in the context of Ms. Hoskins raising concerns about being subjected to

written discipline based on the condition of her assigned room, in the context of Ms. Hoskins raising concerns about her three-year-old son transitioning to the three-year-old class room, and in the context of Ms. Hoskins asserting that other daycare staff had engaged in aggressive behavior toward children at the child care center.

In mid-April, 2019, Ms. Hoskins told the employer that she was concerned about a particular employee's aggressive interactions with children at the center. The employee in question was the daughter of the center's director, Tracey Bolin, and co-owner Blaine Bolin. The employer reassigned the employee in question to a different work area where the employee could be more closely monitored. The employer subsequently concluded the employee in question did not present a concern.

On Sunday, April 28, 2019, the employer spent hours rehabilitating Ms. Hoskins' assigned class room in preparation for a state agency inspection of the facility. During that process, the employer moved a large number of toys intended for use in the two-year-old room from where Ms. Hoskins had sequestered the toys in storage bins located in other rooms back to the shelves in the two-year-old room. The employer fixed a broken toilet that Ms. Hoskins had closed with tape. In addition, the employer cleaned dirty dishes and shelves and performed minor decoration of the room that included installing an alphabet banner. Ms. Hoskins was responsible for maintaining a clean environment that was appropriately stocked with toys for the two-year-olds in her care to explore.

On Monday, April 29, 2019, Blaine Bolin and another staff member met with Ms. Hoskins to present her with two written reprimands that Tracey Bolin had prepared for Ms. Hoskins in response to the room cleanliness and absence of toys concerns. Ms. Hoskins was upset about receiving the written reprimands.

On the morning of April 30, 2019, Ms. Hoskins confronted Tracey Bolin about the written reprimands, asserted that she was a good employee, and asserted that multiple employees had engaged in aggressive contact with children at the center. Ms. Hoskins cited these incidents of aggressive behavior as the basis for not wanting her three-year-old child to transition to the three-year-old room. Ms. Hoskins referenced incidents from years past, including an incident from three years earlier when her now six-year-old son had been three years old and been in the care of staff in the three-year-old room. Ms. Bolin became upset about the allegations that Ms. Hoskins was making. A heated exchange ensued. Ms. Bolin scolded Ms. Hoskins that it was not okay for Ms. Hoskins to be making such allegations and not okay for Ms. Hoskins to have withheld such concerns for an extended period. Ms. Bolin reminded Ms. Hoskins that Ms. Hoskins was a mandatory child abuse reporter. Ms. Hoskins asserted on the one hand that she was "no snitch" and on the other hand that she had longer before brought concerns to the attention of owner Elizabeth Bolin, but that nothing had been done in response. After the exchange ended, Ms. Hoskins engaged in conversations with other staff and with at least one parent regarding her allegations that staff had directed aggressive behavior toward children at the center. After one or more staff members and the parent of a child in the care of the daycare contacted the employer with concerns tied to the discussions Ms. Hoskins had initiated, the business owners decided to discharge Ms. Hoskins from the employment.

Ms. Hoskins established an original claim for benefits that was effective May 12, 2019 and received \$1,256.00 in benefits for four weeks between May 19, 2019 and June 15, 2019. This employer is the sole base period employer in connection with the claim.

On May 31, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Hoskins' separation from the employment. Blaine Bolin and Tracey Bolin represented the employer at the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

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 proof in this matter. 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 is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty 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 weight of the evidence establishes a discharge based on misconduct in connection with the employment. Ms. Hoskins may or may not have had legitimate concerns about incidents involving staff members' interactions with children at the daycare center. The parties agree that Ms. Hoskins was a mandatory child abuse reporter and, based on that status, was obligated to report such incidents when she first became aware of them. If one is to give weight to Ms. Hoskins' April 30 allegations that staff had mistreated children on multiple occasions, then one must also give weight to the employer's concerns that Ms. Hoskins, a mandatory child abuse reporter, had knowingly and intentionally withheld critically important information from the employer for extended periods that lasted up to years following the purported incidents. The context in which Ms. Hoskins decided to raise the mostly stale concerns would lead a reasonable person to conclude, as the employer concluded, that Ms. Hoskins' primary goal was to sow chaos in the workplace in response to the reprimands the employer issued to her on April 29, 2019. The weight of the evidence establishes that Ms. Hoskins did indeed engage in inappropriate conversations with staff and at least one parent following her heated exchange with Ms. Bolin. Ms. Hoskins knew at the time she engaged in those conversations that they were contrary to the employer's interests and would create problems for the employer. The weight of the evidence does not support Ms. Hoskins' assertion that she was "a good employee," at least not as a reasonable person would define that term. Rather, the weight of the evidence indicates that Ms. Hoskins earned the reprimands the employer issued to her on April 29 by her ongoing neglect of the cleanliness of her assigned classroom and by her ongoing sequestration of toys intended to enrich the time the two-year-olds spent confined to her care. The weight of the evidence indicates a parallel laxity on the part of the employer, coupled with an impending state inspection that spurred the employer's April 29 response. The weight of the evidence establishes an elevated level of chaos in this particular workplace, with many people and factors contributing to the chaos. Regardless, the evidence establishes a discharge based on willful and wanton disregard of the employer's interests. Accordingly, Ms. Hoskins is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Hoskins must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Hoskins received \$1,256.00 in benefits for four weeks between May 19, 2019 and June 15, 2019, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Hoskins received constitute an overpayment of benefits. Because the employer participated in the fact-

finding interview, Ms. Hoskins is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

**DECISION:**

The June 6, 2019, reference 01, decision is reversed. The claimant was discharged on April 30, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$1,256.00 in benefits for four weeks between May 19, 2019 and June 15, 2019. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs