

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CHRISTOPHER A HECHT
Claimant

APPEAL 23A-UI-04766-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIouxLAND COMMUNITY CHRISTIAN SCH
Employer

**OC: 04/09/23
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 1, 2023, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2023. Claimant Christopher A. Hecht participated and was represented by attorney Amy Beck. Employer Siouxland Community Christian School participated through superintendent Lindsay L. Laurich. The administrative law judge left the hearing record open through May 26, 2023, to allow the parties time to submit documentation. The parties submitted the documentation prior to the closing of the record. Claimant submitted a filed complaint that was received in evidence as Exhibit A. Employer submitted three letters that were received as Exhibit 1.

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: Claimant was employed full time as a director of buildings and grounds from August 5, 2016, until January 6, 2023, when he was discharged.

Claimant signed an employment contract with employer for the 2022-2023 school year which provides that employees are expected to enroll eligible children in the employer school. Claimant's three children were enrolled in the school. However, after an October 2022 incident in which one of his children received injuries after being removed from a classroom by staff members, claimant began exploring enrolling his children in a different school district. Claimant did not feel that the school was taking their concerns seriously.

On December 12, 2022, employer received a call from a nearby school district inquiring about claimant's children's school records. Employer was unaware claimant was considering enrolling his students in another district. Employer's director of admissions sent claimant's wife an email

and said she was sorry they were leaving the district. Neither claimant nor his wife had determined the children were leaving the school and his wife responded by asking where she heard that. The director responded she heard from the other school district. Employer had no further communication with claimant or his family regarding the children's enrollment in the school. Claimant did not tell employer the children were leaving the school.

On December 13, 2022, employer received a complaint from a student and teacher regarding claimant's conduct. They stated claimant used profanity during conversations, made inappropriate comments, and touched students backs and neck in a non-sexual manner that made students uncomfortable. Employer placed claimant on administrative leave effective December 14, 2022 pending an investigation. Due to an incident later that day involving a family member of claimant's who went to the superintendent's home, claimant and his wife were banned from being on school property pending the investigation. Employer did not provide claimant with any details of the allegations made against him, nor did it interview him as part of its investigation.

Claimant's children did not return to school after winter break. On January 6, 2023, employer discharged claimant for failing to enroll his children in the school, citing breach of contract.

On January 13, 2023, employer notified claimant it was amending his discharge to include a finding that claimant engaged in unwanted verbal comments and touching, creating an intimidating and hostile environment in violation of employer's policies.

Claimant received no disciplinary action during his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Employer testified it maintains a policy which requires employees enroll their children in its school. However, the actual contract language relating to enrolling children is that it is an expectation, and there is nothing in the contract or handbook to indicate that an employee will be discharged for failing to do so. Employer's concern appears to be that claimant failed to request an exemption prior to unenrolling his children; however, it presented no evidence of any such policy requiring an exemption, nor did it produce evidence that employees were made aware they could be discharged for failing to keep their children enrolled in the school.

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

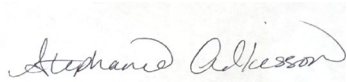
Employer has not carried its burden of establishing that claimant engaged in conduct despite prior warning, or that his conduct was so egregious as to constitute disqualifying misconduct without prior warning. The issue is not whether the employer was justified in discharging claimant, but whether it has demonstrated that he engaged in conduct such that he should be disqualified from receiving unemployment benefits. Employer has not done so. Claimant was discharged for unenrolling his students, and at no time was claimant made aware that doing so could lead to discharge. Benefits are allowed, provided claimant is otherwise eligible.

Employer also argued claimant was discharged a second time after an investigation into claimant's conduct unrelated to his children's enrollment in the school; however, claimant was

already discharged on January 6, 2023. As such, claimant's second reason is not relevant. However, even if employer had discharged claimant solely based on the investigation into complaints regarding his conduct, claimant would be eligible for benefits. Claimant was placed on leave for vague allegations of harassment. Claimant was not given the opportunity to learn the allegations made against him, let alone respond to the allegations prior to the discharge decision. However, the determining factor is that claimant had not received warnings for any conduct similar to that for which he was discharged. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

DECISION:

The May 1, 2023, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie Adkisson
Administrative Law Judge

May 31, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.