

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA J WILFORD
Claimant

APPEAL NO: 18A-UI-05653-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST
Employer

OC: 04/22/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated May 8, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily left employment on April 23, 2018, without good cause. After due notice was provided, a telephone hearing was held on June 7, 2018. Claimant participated. Although duly notified, the Employer did not respond to the Notice of Hearing and did not participate.

ISSUE:

The issue is whether the evidence in the record establishes work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Rebecca Wilford began employment with the Cedar Rapids Community School District on August 22, 2005. Ms. Wilford worked as a full-time child care assistant III. The claimant's employment with the Cedar Rapids Community School District came to an end on April 23, 2018, when Ms. Wilford was given the option of resigning in lieu of being discharged on that date. Ms. Wilford chose to resign in order to protect her employment history.

Approximately three weeks before the claimant's separation from employment date, the school district began an investigation into a complaint made that Ms. Wilford had, without good cause, had taken a cot away from a young student, forcing the student to take his nap on the floor. There had also been an allegation that Ms. Wilford had intentionally pulled the ponytail of another student.

Ms. Wilford denied the allegation of pulling a student's ponytail. The claimant explained to her employer at the time of the allegation, that she had removed the cot from one student during nap time in order to protect the student from injury. The student had been repetitively running, jumping, and bouncing off the cot instead of taking a nap as instructed, and based upon his repeated refusals, Ms. Wilford was concerned that the child might injure himself or others bouncing off the cot. Ms. Wilford arranged blankets and other materials to form a bed-like

surface for the child to rest on, and the child did so without complaint. The claimant's intention was not to punish the child but to safe-guard him and attempted to explain this to her employer during the investigation.

On April 23, 2018, Ms. Wilford was called to a meeting and told that she was going to be discharged from employment, the claimant was given the option of submitting her resignation in lieu of being discharged, but no other alternatives were available to her. The claimant elected to resign, only to protect her employment history. Ms. Wilford continued to deny any wrongdoing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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).

When an individual is compelled to resign by being given the choice of resigning or being discharged, the separation is not considered to be a voluntary quit, but is considered a discharge.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons that constitute work connected misconduct. See Iowa Code Section 96.5-2-a. The employer has the burden to prove that the claimant was discharged for work connected misconduct as defined Iowa Employment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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 and culpability. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Misconduct is a deliberate violation or disregard of the standard behavior the employer has a right to expect from employees or an intentional and substantial or disregard of the employer's interests or the employee's duties and obligations to the employer. 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a.

In the case at hand, the claimant was discharged based upon an allegation that she had acted improperly by removing a cot from a child under her supervision and because it was alleged that Ms. Wilford had intentionally had pulled the ponytail of another child. The claimant denies the allegation of pulling the hair of one of the children and explained to her employer that her intention of removing the cot from another child was not to punish the child but to protect him from injury and the child would not listen to Ms. Wilford's directives and continued to bounce off the cot, endangering himself and other students. In conjunction in removing the cot, Ms. Wilford specifically prepared a bed-like spot for the child to nap on. Ms. Wilford was not aware that she was violating any school district policies and believed she had the best interests of the child in mind when she took the action for the child's safety.

In this matter, the claimant participated personally, testified under oath, answered questions subjecting herself to the possibility of cross examination. In contrast, the only evidence supporting the employer unsworn statements made regarding the claimant. In the absence of any other evidence of equal weight either contradicting or explaining the testimony of Ms. Wilford, the weight of evidence establishes in favor of the claimant. The evidence in the record does not establish intentional work connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated May 8, 2018, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn