

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA B SAMUELSON
Claimant

APPEAL NO. 08A-UI-03501-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WHITES IOWA INSTITUTE
QUAKERDALE**
Employer

**OC: 03/09/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 31, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2008. Claimant participated personally with witness Dewayne Buhr. Employer participated by Jeff Lasley, Director of Administrative Services. Exhibits One and A were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 7, 2008.

Claimant was discharged on March 7, 2008 by employer because claimant failed to follow protocol with a juvenile client who was out of control. Claimant was to contact the campus director before asking that an out of control juvenile be removed from the facility. The campus director was available at the facility but not in his office. The juvenile client was acting out and running away. Claimant contacted local police informing them that the juvenile client had run away. Claimant contacted the state case worker to report the run away. Claimant and her coworker decided that the juvenile should be removed from the facility. Claimant called the campus director's office and found him not available. The campus director was on campus in the building next door. Claimant failed to make a legitimate attempt to contact the campus director before asking for removal from the facility. Claimant did not have the authority to ask that the juvenile be removed.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning following chain of command for removal of a juvenile from the facility. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because this is an isolated instance of poor judgment. Claimant should have followed protocol with contacting the campus director before making a decision to ask for removal of the juvenile from the facility. The lack of a prior warning detracts from a finding of intentional conduct. This is an isolated instance of poor judgment with no prior warnings on a similar issue. While it is a violation of policy, there is no evidence to prove that claimant knew she would be discharged as a consequence. The administrative law judge holds that claimant was not discharged for an act

of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 31, 2008, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs