

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BRENDA A JASPER
232 E 26TH ST
DUBUQUE IA 52001

HILLS & DALES CHILD
DEVELOPMENT CENTER INC
1011 DAVIS ST
DUBUQUE IA 52001-1390

Appeal Number: 05A-UI-12184-DT
OC: 10/30/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brenda A. Jasper (claimant) appealed a representative's November 21, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hills & Dales Child Development Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 28, 2005. The claimant participated in the hearing. Carol Bogee appeared on the employer's behalf and presented testimony from one other witness, James Kloffner. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 19, 2003. She worked full time as a personal assistant at the employer's agency for mentally handicapped children and young adults. Her last day of work was October 31, 2005. The employer suspended her that day and discharged her on November 3, 2005. The stated reason for the discharge was discussing an alleged potential abuse investigation with another employee and then lying about having had the contact.

On October 31, 2005, an allegation of abuse of a client was made against another employee. Both the claimant and Mr. Kloffner, another personal assistant, were identified as persons who might have information as witnesses regarding the allegation. The director of program services contacted the claimant and queried her about the incident, and the claimant disclaimed any knowledge of the incident. The director then met with Mr. Kloffner to obtain his statement regarding the incident. During that meeting, the claimant attempted to contact Mr. Kloffner on his cell phone. He did not take the call at that time, but later returned the call while still in the presence of the director. The claimant asked Mr. Kloffner if the director had contacted him with regard to the alleged abuse. Mr. Kloffner denied that she had, because he understood the employer's policy regarding the confidentiality of potential abuse investigations to include that he should not acknowledge to coworkers that he had been interviewed. The claimant then proceeded to tell Mr. Kloffner what another employee was alleged to have done to the client.

On November 1 the director and the claimant had another discussion in which the director asked the claimant if she had had any contact or discussion with any other employee about the investigation or the alleged abuse. The claimant responded, "No." As a result of the claimant's contact with another employee regarding the investigation of the alleged abuse and her subsequent denial of having had such contact, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's failure to be forthright with the employer about having had an at least questionable conversation about the investigation with another employee shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. White v. Employment Appeal Board, 448 N.W.2d 591 (Iowa 1989), The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 21, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 31, 2005. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/kjw