

**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**

**JESSIE T ABERSON  
915 E MILWAUKEE AVE  
STORM LAKE IA 50588-2122**

**GINGERBREAD HOUSE CHILD  
DEVELOPMENT CENTER INC  
PO BOX 161  
STORM LAKE IA 50588-0161**

**Appeal Number: 06A-UI-06805-LT  
OC: 05-21-06 R: 01  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the June 23, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 26, 2006. Claimant participated with Danelle Lovetinsky. Employer participated through Andrea Hogrefe, Marilyn Nelsen and Katie Crampton. The issue is whether claimant was discharged for reasons related to job misconduct. The administrative law judge took judicial notice of the administrative record. Claimant's Exhibit A was received.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time lead teacher from May 19, 2006 through May 25, 2006 when she was discharged. Iowa Central or high school students Brittany Melby and Melanie Persoon

reported complaints about her treatment of one to two-year-old children to Marilyn Nelsen that claimant ate chips in front of the children, ate in the diaper changing room, sat on the slide and would not let the children use it, would not talk to the students or children but talked about drinking to another staff member, Tanya. Claimant told one intern not to let the children help pick up the toys and to push them aside since they would make a bigger mess if she let them help. The students were last in the room on May 4 but did not immediately report their concerns because of fear of repercussions in the room or with their school evaluations. They also observed claimant being "rude" to the children, throwing toys across the room or tossing plastic drink cups at the children to get their attention but changing her behavior when a parent or other staff member entered the room. Claimant also failed to interact with the children and did not follow established health and safety procedures for the diaper area.

The most recent warning was issued on February 21, 2006 about failure to comply with proper procedures for cleaning the diaper table according to the staff manual. There were ongoing verbal and written warnings on September 22, 2005, January 18, 2006 and February 21, 2006 about failure to interact with the children after claimant would act appropriately and then backslide. Employer issued a performance evaluation to claimant on May 11, 2006 citing her unwillingness to cooperate with staff, her failure to interact with the children and instead standing by the door visiting with other staff. Another warning was issued on May 23 about talking with staff instead of playing with the children.

On May 22 and 23 staff members Kristen Vogel and Jessie Beyer reported they would not work with claimant since she was telling the children to "shut up", was rough instead of patting them to sleep and would make other staff clean the toys everyday without assistance.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Lovetinsky and the parents did not work in the room with claimant as the students did and the complaints from multiple students and staff members render claimant's denial of the reasons for the separation incredible. Claimant's repeated verbal abuse of the children, talking to other staff when she should have been interacting with the children, and eating in front of them after having been warned is evidence of her willful behavior and is misconduct. Benefits are denied.

#### DECISION:

The June 23, 2006, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/pjs