

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA K MULLINS
Claimant

APPEAL NO. 10A-UI-05183-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE EASTER SEAL SOCIETY OF
IOWA INC**
Employer

OC: 03/07/10
Claimant: Appellant (2)

Section 96.5(2a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sandra Mullins filed an appeal from a representative's decision dated March 30, 2010, reference 01, which denied benefits based on her separation from the Easter Seal Society of Iowa, Inc. After due notice was issued, a hearing was held by telephone on May 18, 2010. Ms. Mullins participated personally. The employer participated by Patti Johanson, Payroll Specialist, and Steven Slye, Director of Community Support Services. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Mullins was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mullins was employed by The Easter Seal Society from December 11, 2006 until February 23, 2010. She was employed full time as an independent living specialist. The employer provides services to individuals, mostly adults, with mental and physical disabilities. Ms. Mullins' job was to provide services to individuals living independently.

On or about February 19, 2010, the mother of a consumer for whom Ms. Mullins provided services expressed concern about the relationship between her daughter, Megan, and Ms. Mullins. Megan is an adult who is mildly mentally retarded. The mother felt there was too much touching. The two sometimes shared a hug. The employer does not prohibit hugging as long as it is initiated by the consumer. The employer was of the opinion that it was Megan who initiated the hugging. The mother's more serious allegation was that Megan sometimes slept with Ms. Mullins.

Ms. Mullins worked the overnight shift while working with Megan. She was allowed to sleep during her shift and used an air mattress in the living room. Megan and her roommate had bedrooms upstairs. Staff other than Ms. Mullins reported that, during their shifts, Megan would

often sleep on the sofa in the living room rather than her own room. Megan sometimes said she did sleep on the mattress with Ms. Mullins and denied it on other occasions. The employer is of the opinion that Megan is eager to please and will give the response she believes is desired of her. Ms. Mullins acknowledged that Megan would sometimes jump or sit on the air mattress when she comes down first thing in the morning. She denied that Megan ever slept on the mattress with her.

There was never any allegation that there was touching of a sexual nature between Ms. Mullins and Megan. There were no prior complaints of Ms. Mullins touching consumers in an inappropriate manner. The employer felt that allowing Megan to sit or lie on the air mattress was unprofessional. The employer also felt the conduct was detrimental to Megan and her family. As a result, Ms. Mullins was discharged. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Mullins was discharged because the employer felt she had crossed professional boundaries. The evidence failed to establish that she did, in fact, allow Megan to sleep on the air mattress with her. Given Megan's contradictory statements on the issue, her statements are given no evidentiary weight. There were no independent witnesses who observed her sleeping with Ms. Mullins.

The letter of discharge indicated that it was allowing Megan to "lay and sit in a staff sleeping area" that was unprofessional. The sleeping area consisted of an air mattress set up in Megan's own living room, a place she had every right to be. The fact that Ms. Mullins allowed her to sit or lie on the mattress when she, herself, was not in bed did not evince a willful or wanton disregard of the standards the employer had the right to expect. The evidence as a whole failed to establish that Ms. Mullins engaged in any inappropriate conduct with Megan.

The administrative law judge appreciates that the employer may have discharged Ms. Mullins to prevent any further concerns on the part of Megan's family. Conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as the evidence failed to establish deliberate and intentional misconduct, benefits are allowed.

DECISION:

The representative's decision dated March 30, 2010, reference 01, is hereby reversed. Ms. Mullins was discharged but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css