

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY D ARNOLD
Claimant

APPEAL NO. 12A-UI-07401-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 05/13/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 14, 2012, reference 04, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on July 16, 2012. The claimant participated. The employer participated by Ms. Robin Moore, hearing representative, and witness Ms. Connie Gremmer, human resource specialist.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tammy Arnold was employed by Mosaic from April 1, 2012, until May 17, 2012, when she was discharged from employment. Mosaic provides direct support services for intellectually and developmentally challenged individuals in residential settings. The claimant worked as a full-time direct support associate and was paid by the hour. Her immediate supervisor was Rose Holmes.

Ms. Arnold was discharged after she failed to maintain direct one-on-one observation and control of an adolescent who she was assigned to on May 17, 2012. The claimant was to keep the adolescent in her view at all times but failed to do so. Ms. Arnold was distracted while watching the adolescent in a playground area and the adolescent went missing for a short period of time before he was later located in a shed.

Because the claimant had been specifically warned on April 1, 2012, for neglect in providing care to an individual, a decision was made to terminate Ms. Arnold from her employment. The claimant was aware of her job responsibilities and was aware that failure to keep close observation of an individual with one-on-one observation requirements could result in her termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In the case at hand, the claimant was discharged after she had been previously been warned for failure to properly provide care for an individual while employed by Mosaic. The claimant's discharge took place when Ms. Arnold failed to maintain direct observation of an adolescent that she was assigned to provide one-on-one observation and coverage for. The claimant failed to keep the individual under her observation, allowing the adolescent to go missing for a period of time. Although the evidence in the record establishes the claimant did not intend to allow the adolescent to go missing, her failure to provide the required one-on-one observation did result in the adolescent going missing for a period of time. This conduct showed a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to

expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 14, 2012, reference 04, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw