

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE R KONZEN**  
Claimant

**APPEAL NO. 10A-UI-07082-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COMMUNITY Y**  
Employer

**OC: 04/18/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 7, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 30, 2010. Claimant participated. Employer participated by Toby Wisecup, executive director, and Pat Emerson, child care director. The record consists of the testimony of Toby Wisecup; the testimony of Pat Emerson; and the testimony of Julie Konzen.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a social service agency that provides child care; exercise facilities; and programming for children; adults; and the elderly. The claimant worked as the school age child care coordinator. This was a full-time position. The claimant was initially hired in August 2004. She was terminated on April 16, 2010.

The claimant's termination was on the employer's belief that her job performance was not improving in accordance with a professional growth plan that had been put down in writing on October 13, 2009. In addition, the employer had received complaints about the claimant from parents and other staff members. The claimant's performance was reviewed with her in January 2010 and her performance was judged as provisional or marginal. The employer did not see any further improvement and terminated her on April 16, 2010.

## 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Unsatisfactory job performance is not misconduct. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See also Green v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to show that the claimant was discharged for a current act of misconduct. The employer had many issues with the claimant's job performance, such as personal use of the employer's phone and computers; shopping during working hours; and inappropriate comments to parents and other staff members. The claimant acknowledged that she did go through a difficult divorce and was bringing some of that into the workplace. However, Ms. Emerson could not document a specific date when these things happened nor could she provide much in the way of detail about the types of complaints she was receiving or when she received them. The employer may have had good business reasons to discharge the claimant. Her performance did not meet the employer's expectations. There was insufficient

evidence, however, to establish a current act of misconduct that would disqualify the claimant from receiving benefits. Accordingly, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated May 7, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs