

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L BOLEY
Claimant

APPEAL NO: 12A-UI-09589-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/08/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 2, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. The claimant's witness was not available for the hearing. The claimant's witness contacted the Appeals Section after the hearing had been closed and the claimant and the employer had been excused. The administrative law judge did not talk to the claimant's witness. Marcela Burkheimer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2004. The claimant worked full time. Most recently the claimant performed light-duty work in the warehouse. During her employment, the claimant had worked at the employer's on-site Child Development Center. After the claimant started working in the warehouse, the claimant wanted to visit employees at the Center who she had become friends with during her breaks. The Center's director told the claimant she could not visit her friends at the Center during her break. When the claimant was on break, the Center employees were not on break. The claimant was told she could visit her friends in the cafeteria.

Four years ago when the claimant worked at the Center another employee, H., was investigated for verbally and physically abusing children at the Center. The allegation was not substantiated and H. continued working for the employer. The claimant worked with H. after the investigation had been completed.

After the Center's director told the claimant she could not visit employees at the Center during the claimant's breaks, the claimant talked to the director's supervisor. The claimant felt the

director made it difficult for the claimant to even visit her grandchild who went to the Center. After talking to management, the claimant understood she could visit any room her grandchild was in, but should not go to rooms to visit employees that her grandchild was not in. The claimant understood she should not abuse her visiting privileges and only last visited her grandchild at the Center in October 2011.

In the last two months of her employment, the claimant understood from an employee at the Center that the state would only allow employees and parents of children who went to the Center to visit the Center. Later, when the claimant received information that H. had been allowed in the Center and the director had opened her door to H. The claimant did not know why H. was talking to the director. The claimant was hurt and upset after she learned H., who was no longer an employee at the Center, was welcomed by the Center's director. The claimant felt the director did everything she could to prevent the claimant from going to the Center, but welcomed H. to the Center.

On July 9, the claimant reported to Burkheimer that a child abuser had been allowed access to the employer's Child Development Center. Burkheimer reported this allegation to the employer's legal department. On July 11, the employer talked to the claimant about the report she made to Burkheimer. On July 11, the claimant acknowledged she had been mad and upset at the Center's director because a former employee, H., was at the Center and the Center director did not treat the claimant the same way.

On July 12, the employer discharged the claimant for violating the employer's code of conduct policy by making a false report.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant asserted she did not know the outcome of the investigation four years ago, she knew that H. continued working for the employer after an incident had been investigated. The claimant did not report any problems with H. when she worked at the Center, even though she was a mandatory reporter.

The claimant became upset with the director because she believed the director did everything she could to prevent the claimant from going to the Center and did not treat the claimant the same way she treated H. Even when the claimant worked at the Center, the Center's policy did not allow outside visitors to go to rooms just to visit with employees. The Center allowed outside visitors or people who were not current employees to the cafeteria to socialize with

employees. The claimant concluded the Center director made it difficult for her to see her grandchild at the Center and talked to the Center director's supervisor. This supervisor told the claimant she could visit her grandchild's room, but needed to be careful so she did not take advantage of the situation. The last time the claimant went to the Center to visit her grandchild was October 2011.

The claimant became upset and hurt after she learned H., who no longer worked for the employer, went to the Center and the Center's director met with H. The claimant did not know why H. was at the Center or talked to the director. If H. had a scheduled appointment with the director, the claimant would not have been so upset. On July 9, the claimant was very hurt and mad at the director. As a result of these emotions, she contacted Burkheimer to report a child abuser had been allowed in the Center. The claimant's decision to report a child abuser had been allowed into the facility because she was angry at the director amounts an intentional act. The claimant's motive for making this report was to make trouble for the director. The claimant's conduct, making a false report, amounts to a substantial disregard of the standard of behavior the employer has a right to expect from an employee.

The claimant's assertion that she made the report only because of her concern for the children at the Center is not credible. This conclusion is based on the claimant's July 11 comments she made to the employer. The employer discharged the claimant for committing work-connected misconduct on July 9, 2012. As of July 8, 2012, the claimant is not qualified to receive benefits.

The issues of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since July 8, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 2, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 8, 2012. This disqualification continues until she 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. The issues of overpayment and whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css