IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CRYSTAL G DOPPLER Claimant **SPENCER FAMILY YMCA** Employer	**APPEAL 16A-UI-06663-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/15/16** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 6, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 30, 2016. Claimant participated. Employer participated through childcare director, Julie Krogman, director of operations, Megan Whitaker, chief executive, officer Nathan Prenzlow, lead teacher, Megan Stone, childcare and kids club employee, Jill Naber, and lead teacher, Megan Lange. Claimant's Exhibits A through F were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 28, 2009. She last worked as the assistant childcare director. Claimant was terminated on May 16, 2016.
During her employment, claimant had concerns that employer was violating Iowa Department of Human Services (DHS) regulations on childcare centers. Specifically, there were times that employer did not meet the staff-to-child ratio mandated by law. Other staff members shared this concern and also had concerns regarding whether employer was serving children food portions that complied with DHS regulations. Claimant and other staff members brought these concerns to the director of the childcare center, but the issues were not corrected.

On March 19, 2016, an employee with Iowa Child Care Resource and Referral provided a training session for employees of employer and other child care providers. Claimant was present along with other lead teachers and childcare workers employed by employer. Claimant

was the highest ranking individual employed by employer in attendance at the training. During the training, the lead teachers and claimant began voicing concerns regarding employer's alleged violations of DHS regulations on childcare centers. Specifically, claimant and the other employees stated that employer regularly violates regulations regarding staff-to-child ratio and food portions and stated they had safety concerns for the children. Lead teachers and claimant also stated that staff were not properly compensated and were regularly required to work beyond 40 hours per week without being allowed breaks. Staff members from other child care agencies were present when this information was provided. At one point, claimant allowed the employee from the Iowa Child Care Resource and Referral and other individuals present in the training to enter employer's childcare center and critique the safety of a room. Based on the information provided, the employee with Iowa Child Care Resource and Referral stated she was going to report employer to DHS for violating its regulations on child care centers. After the training ended, claimant stayed late and met with the Iowa Child Care Resource and Referral employee alone.

On April 4, 2016, a letter was submitted to DHS sharing several concerns regarding employer's childcare center. Specifically, the letter stated that the center is continually out of ratio, the center did not have enough supplies, adequate food servings were not provided to the children, and that staff were not properly compensated and were often required to work more than 40 hours per week without being offered breaks and benefits.

As a result of the letter, a DHS employee visited the childcare center on April 8, 2016. On April 12, 2016, DHS issued a report substantiating the allegation that the childcare center did not maintain ratio in each classroom as required by age. The other allegations were not substantiated. However, DHS made recommendations regarding classroom materials, food servings, and breaks for staff members. DHS also recommended that employer develop a specific process allowing employees to identify concerns and complaints, including assurances the complaints will be acted upon without fear of reprisal.

On April 18, 2016, childcare and kids club employee, Jill Naber, reported that claimant and other staff members voiced concerns regarding the childcare center during the March 19, 2016, training which led to the complaint to DHS. Naber was not present at the training. Naber was reporting what she heard from other staff members.

Childcare center director, Sharon Krogman, questioned claimant about Naber's report on three separate occasions. The first two times, claimant denied any involvement or knowledge of what occurred. The third time Krogman questioned claimant, on May 6, 2016, she became defensive.

On May 11, 2016, lead teacher Megan Lange, who was present at the training, confirmed Naber's report.

On May 16, 2016, employer terminated claimant's employment citing the letter that was sent to DHS. Claimant had never been previously disciplined regarding similar conduct.

The issues regarding staffing and food portions were corrected after the DHS visit to employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.*

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant was terminated for voicing concerns regarding employer's alleged violation of DHS regulations for childcare centers and for her failure to attempt to prevent others from complaining during a training session. Claimant's actions led to a complaint being filed with DHS regarding the conditions at employer's childcare center. Although claimant denies participating in this conduct, I do not find her testimony credible. Several other witnesses who also admitted to complaining testified that claimant was involved in the conduct.

DHS investigated and found employer was in fact in violation of at least one regulation and gave several recommendations regarding compliance with others. Although the way claimant handled the situation could have been more professional, it cannot be said it was in complete disregard of employer's interests. Ultimately, employer has an interest in complying with DHS regulations. Claimant and other staff members previously tried to address the rule violations internally with no success. After the DHS visit, the issues have been corrected. Claimant had never been previously warned about similar conduct, and as DHS noted, employer did not have a specific complaint process available that would allow employees assurance that complaints would be reviewed and acted upon promptly.

It is employer's ultimate burden to establish claimant was terminated for job-related misconduct. Here, it failed to do so.

Claimant is qualified to receive benefits. Thus, the issues regarding overpayment are moot and will not be addressed further in this decision.

DECISION:

The June 6, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

_____

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

_____

Decision Dated and Mailed

cal/pjs