

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 06A-UI-07485-LT
OC: 06-25-06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the July 18, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 28, 2006. Claimant participated and was represented by Nathaniel Boulton, Attorney at Law. Employer participated through Deb Urban. The issue is whether claimant was discharged for reasons related to job misconduct. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time master's degree level family therapist from June 23, 2005 through June 27, 2006 when she was discharged. Employer contracts with DHS to provide services by going into the home and reporting any safety concerns about its clients as directed by the DHS

caseworker overseeing the case. Employer encourages claimant and other employees to verify via e-mail verbal instructions from a DHS caseworker. On June 23 a caseworker reported that claimant had made decisions about case files and families without permission of the court or DHS. That caseworker also reported complaints about claimant by another caseworker.

The first report concerned claimant leaving children for an hour and a half at a public swimming pool with their mother who was supposed to have only supervised visits. The removal from the home the previous week was because of a hair sample positive for exposure to illegal drugs. In another case, the grandfather was court ordered to remain at the home to supervise but claimant told him he could leave without advance DHS permission thus violating the DHS contract and threatening the safety of the child. Claimant was not aware of the court order but did not regularly ask the DHS caseworkers for information about the existence of court orders or verify verbal communication in writing. Both files had written instructions from DHS requiring supervised visits.

Employer confronted her on June 23 and placed her on suspension pending investigation. There had been no prior warnings but employer's policy calls for immediate termination upon a safety threat to any clients.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's failure to remain at the pool with children recently removed because of their mother's drug use, knowing that their visits were to be supervised was a deliberate action contrary to written instructions in the file. Likewise, allowing the grandfather to leave the home and stop providing supervision before receiving authority from DHS, even if the court order was not in the file, was also contrary to employer's, and by extension, the clients' best interests. Because of the potential severe consequences, claimant's failure to follow written DHS orders by not providing supervision for the at risk children rose to the level of misconduct and is disqualifying even without a prior warning. Benefits are denied.

DECISION:

The July 18, 2006, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

dml/pjs