

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KADASHIA S MADISON
Claimant

APPEAL NO. 11A-UI-05384-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOYS CLUB OF DES MOINES
Employer

**OC: 02/27/11
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Boys Club of Des Moines, filed an appeal from a decision dated April 12, 2011, reference 01. The decision allowed benefits to the claimant, Kadashia Madison. After due notice was issued a hearing was held by telephone conference call on May 17, 2011. The claimant participated on her own behalf and with Kierra Fisher. The employer participated by Senior Human Resources Assistant Alicia Perez and Unit Director Roger Dahl.

ISSUE:

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

FINDINGS OF FACT:

Kadashia Madison was employed by Boys Club of Des Moines from January 7, 2008 until February 16, 2011 as a part-time youth development professional. On February 16, 2011, a volunteer, Forrest Weber, notified Unit Director Roger Dahl, of an incident involving Ms. Madison and a club member. It was reported the claimant had grabbed the club member's arm and slapped him in the face on February 14, 2011. The incident had been reported to Office Manager Adam Wolfe at the time but when nothing was done, Mr. Weber reported the matter to the director.

Mr. Dahl questioned Mr. Wolfe to ask whether Mr. Weber had made the report and the office manager admitted he had, but Mr. Wolfe had gotten busy and hadn't passed the information along. The director then questioned the club member and a supervisor and the club member said he had been "acting out" and Ms. Madison, who is his cousin, had grabbed him by the arm and slapped him. Mr. Dahl then interviewed Ms. Madison and her supervisor, Jennifer Allanby. The claimant admitted she had taken the club member by the arm to escort him to an office for a "time out" but denied slapping him. She was suspended pending the outcome of the investigation.

Mr. Dahl consulted with Chief Professional Office Jodie Warth and the decision was made to discharge the claimant for violation of company policy. The policy forbids staff members from

physically disciplining club members. Ms. Warth notified the claimant later that day by telephone she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the only alleged eyewitness to the incident between the claimant and the club member did not testify. The claimant's witness confirmed there was no slapping only that the claimant took the club member's arm to escort him to a location for a time out.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of April 12, 2011, reference 01, is affirmed. Kadashia Madison is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs