IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA HUNZIKER
Claimant

TRADITIONS CHILDRENS CENTER IV INC
Employer

APPEAL NO. 11A-UI-10396-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07-10-11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 3, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 31, 2011. The claimant participated in the hearing. Kristen Harris, director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time teacher for Traditions Childrens Center IV from October 19, 2009 to July 5, 2011. The employer's disciplinary policy states that if an employee receives three written warnings during her employment, she will be terminated. Warnings remain on the employee's record throughout their employment and do not drop off. The claimant received a written warning June 15, 2010, because another driver stated she was texting and swerving while transporting the children. The claimant denied texting and testified her phone rang, she shut it off, and put it in the cup holder. She stated she may have swerved within her own lane but did not go outside of her lane and it may have occurred when she turned to tell the children, who were jumping around, to stay in their seats. The claimant had been talked to about texting while on the playground and stopped after that conversation. The claimant received her second written warning December 28, 2010, after another employee found the claimant's son's Ritalin among the children's paint brushes. The claimant did not know how the medication got out of her closed purse and usually kept the medication in the medication boxes provided by the employer. Although that was the claimant's second written warning, she was not aware her job was in jeopardy, because she did not recall that three written warnings would result in termination. On July 1, 2011, the claimant's boyfriend's 16 year old daughter and the claimant's 10 year old son came to work with her, as it was the day before a holiday weekend and there were only five children in the classroom. Director Kristen Harris found the claimant's boyfriend's daughter reading to a child and because she was volunteering without clearing it through Ms. Harris and had not had a background check, Ms. Harris issued

her a third written warning and terminated her employment when she reported for work July 5, 2011. She had mentioned to the assistant director she might bring her boyfriend's daughter, who was visiting from out of state, to the center, but had not made any arrangements with Ms. Harris or received permission to do so. She assumed it would be alright because there were so few children there and she trusted her boyfriend's daughter with the children, but now understands the employer needs to know who is interacting with the children. The claimant did not know she was jeopardizing her job by having her boyfriend's daughter help in the classroom.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant

accumulated three written warnings between June 15, 2010 and July 5, 2011, she was not aware her job was in jeopardy. The claimant credibly denied texting while driving June 15, 2010, but admits she looked down at her cell phone and put it in the cup holder and may have swerved within her lane when turning around to tell the children to remain in their seats on the bus. She did not know how her son's Ritalin got out of her purse, because it was closed and she usually kept her medication in the medication box. She knows that allowing children access to any medication is unacceptable but believes one of the children may have got into her purse and pulled the medication bottle out. Although she should have had it in the medication box, this was an isolated instance of carelessness. The final incident occurred July 1, 2011, when she brought her boyfriend's daughter and her ten year old son to school to help her with the five children scheduled to be there that day. She agrees, in hindsight, that she should have cleared their presence in the classroom with Ms. Harris but failed to do so because she did not realize that it was such a serious issue. She credibly denied that her boyfriend's daughter was working one-on-one with a child and her adult sons had helped out at the school and interacted with the children in the past without incident. While the employer should know and approve everyone who is having contact with the children, the claimant did not realize the seriousness of her decision to have her boyfriend's daughter and her son in the classroom. The claimant made an error in judgment by bringing them into work with the children. However, her actions, even taken together, were isolated incidents and do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 3, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/kjw