

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY L JONES
Claimant

APPEAL NO. 14A-UI-03385-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRITE BEGINNINGS INC
Employer

OC: 02/23/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 18, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. Employer participated by Mary Beth Corrigan, Regional Director, and Renee Morales, Director of the Urbandale Center. The record consists of the testimony of Mary Beth Corrigan; the testimony of Renee Morales; the testimony of Kelly Jones; and Employer's Exhibits 1-8.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a child development center located in Urbandale, Iowa. The claimant was hired on August 13, 2012, as a child development specialist. She was a full-time employee. Her last day of work was February 25, 2014. She was terminated on February 25, 2014.

The incident that led to the claimant's termination occurred on February 25, 2014. The claimant heard a loud ruckus at one of the tables where a group of children were seated. A group of children was making fun of another child. The claimant told the children in a loud voice that the children needed to leave C alone. One of the girls peed in her pants after the claimant had yelled at the children. The child's mother had to be called to provide a change of clothes. The child told her mother that had urinated in her pants because the claimant had yelled at her. The employer considered the claimant's yelling at the children to be "humiliation of a child", which is a violation of a provision in the employee handbook. The claimant was terminated for this violation.

The claimant had received what the employer called a "caution notice" on November 12, 2012, for inappropriate tone and volume with children. (Exhibit 8)

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence showed that the claimant was discharged because she yelled at a group of children who were teasing another child. One of the children was upset by what the claimant did and so she urinated in her pants. The administrative law judge understands that this was probably not the optimal way to handle the teasing that was going on. However, the claimant's actions are more akin to an error in judgment or discretion in her part when confronted with the situation. There is no pattern of this type of behavior even though one caution notice was given back in November of 2012. Since the employer has not shown disqualifying misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 18, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css