

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY F RYAN
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL 18A-UI-09794-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/26/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 19, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on October 9, 2018. The claimant, Tammy Ryan, participated and was represented by Christy Hickman, Attorney at Law. The employer, Cedar Rapids Community School District, did not register a telephone number at which to be reached and did not participate in the hearing.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a teacher at Metro Alternative High School, from August 2010 until August 30, 2018, when she was discharged. Claimant shared the classroom in which she taught with another teacher. Claimant taught in the classroom two periods per day, and the other teacher taught in the classroom the rest of the day.

On April 17 or 18, claimant walked into the classroom and saw an African-American baby doll suspended from the ceiling by a Christmas ribbon tied around its waist. Claimant believed the doll was supposed to be flying. The doll hung from the ceiling for approximately one and one-half days. On April 20, 2018, the principal called claimant to the office and showed her a Facebook post someone had made of the baby doll. At that point, claimant realized the doll flying had been interpreted as the doll being lynched. Claimant went into “problem-solving” mode and wanted to give her students restorative justice and talk with them about what occurred. On April 23, claimant was placed on administrative leave because of the incident with the baby doll. The employer investigated and ultimately discharged claimant from employment on August 30, 2018. Claimant had never been warned for any prior similar conduct. Claimant testified that no student reported any issue with the baby doll to her, and her students were normally vocal with her about any concerns they had.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established...

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden

of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule.

In this case, the employer did not participate in the appeal hearing through testimony or documentation. It does not appear, based on the record developed during the appeal hearing, that the other teacher who used the classroom was similarly discharged, even though this teacher must have seen the doll hanging from the ceiling just as the claimant did. Since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits. The employer has not met its burden of proving that claimant was discharged from employment for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 19, 2018 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn