

**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**

**TODD C HAYES
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SIOUX CITY IA 51103**

**BOYS AND GIRLS HOME OF NEBRASKA
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**Appeal Number: 04A-UI-02836-A
OC: 02-08-04 R: 01
Claimant: Respondent (2)**

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)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Boys and Girls Home of Nebraska filed a timely appeal from an unemployment insurance decision dated March 4, 2004, reference 01, which allowed benefits to Todd C. Hayes. After due notice was issued, a hearing was held in Sioux City, Iowa on September 23, 2004. Michele Lewon, attorney at law, appeared on behalf of the employer. Human resources specialist Mark Nielsen testified, and Exhibits A through P were admitted into evidence. The claimant did not respond when paged at the time of the hearing and again prior to the closing of the record.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Todd C. Hayes was employed as a residential counselor by Boys and Girls Home of Nebraska from February 18, 2003 until he was discharged January 19, 2004. The final incident occurred on January 4, 2004. Mr. Hayes intervened in a matter between a client and another residential counselor, yelling at the client and blocking the door so that his colleague, the person handling the situation, was effectively prohibited from responding. The employer investigated the situation, taking statements from all witnesses, including Mr. Hayes and the client, before discharging him.

Mr. Hayes had received training on the tactful resolution of situations such as this and had received previous warnings for similar outbursts of his own temper. The clients were children between the ages of 12 and 18. Most of them were receiving services from the employer pursuant to court order. Mr. Hayes has received unemployment insurance benefits in the amount of \$5,321.24 since filing a claim effective April 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Hayes was discharged for misconduct in connection with his employment. It does.

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.

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 evidence establishes a final incident in which Mr. Hayes violated company policies both in his intervention and in his manner of responding to the situation with the client. The evidence establishes that Mr. Hayes had received appropriate training and that he had been disciplined for similar infractions in the past. Benefits are withheld.

Mr. Hayes has received unemployment insurance benefits to which he is not entitled. They must be recovered with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated March 4, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$5,321.24.

b/b