

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE J GARDNER
Claimant

APPEAL NO. 13A-UI-09275-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CHARLEY BROWN COMMUNITY DAY
CARE**
Employer

**OC: 07/14/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 7, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2013. Claimant participated. Employer participated through executive director Amber Morud and onsite director Kris Tabbort. Employer's Exhibits 1 and 2 were received. Claimant's Exhibits A and B were received. Because claimant was fired for refusal to take a drug screen, her exhibits are not relevant to the reason for the separation.

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 as a child care provider/administrative assistant from 2007, and was separated from employment on July 19, 2013. On July 17, assistant preschool teacher Amanda Hanson reported suspicion of claimant's drug use after having gone to her home and smelled marijuana in her house and on her children. She also reported having seen text messages exchanged about drug use and having to use eye drops before work. Morud was not able to get an appointment for a drug screen until July 19. She and Tabbort approached claimant with a copy of the policy and told her she was being required to submit to a drug screen based upon reasonable suspicion. Claimant asked for time to think about it. Morud allowed her to do so but asked her to stay on site while thinking about it and reminded her that according to the policy, refusal will result in immediate termination. (Employer's Exhibit 1) Claimant later told Morud she could pass it so Morud told her, "Let's go so you don't lose your job." Claimant refused so Morud told her that her employment was terminated and she should leave. Claimant asked if she could bring her children back for care when she found another job. Morud said that she could.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

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 met the requirements of Iowa Code § 730.5 because claimant received a copy of employer's drug and alcohol use policy and refused to submit to the reasonable suspicion testing, which called for immediate termination. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The August 7, 2013, (reference 01) decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>