

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MENNTALLAH H MAHMOUD
Claimant

APPEAL NO. 24A-UI-07916-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHINING STARS CHILD DEVELOPMENT
Employer

OC: 08/04/24
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On September 5, 2024, the employer filed a timely appeal from the August 27, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on August 7, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on September 23, 2024. Mennatallah Mahmoud (claimant) participated. Lacy Gomez represented the employer and presented additional testimony through Jaden Littell. Exhibits 2, 3, 5, 6, 8, 10 and 11 were received into evidence. Exhibits 1, 4, 7, 9 and 12 were not received into evidence. Exhibit 1 was duplicative of Exhibit 2. Exhibits 4, 7, 9 and 12 were statements prepared well after the discharge from the employment and included allegations the employer was unaware of and did not consider when discharging the claimant from the employment. The administrative law judge took official notice of the following IWD administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Mennatallah Mahmoud (claimant) was employed by Shining Stars Child Development Center as a full-time child care center teacher from 2023 until August 7, 2024, when Diana Marquardt, the business owner, discharged her from the employment. Until June 9, 2024, Ms. Mahmoud worked as a full-time teacher in the three-year-old room. In February 2024, the employer promoted Ms. Mahmoud to Onsite Supervisor. Until June 9, 2024, Ms. Mahmoud's scheduled work hours were 7:15 a.m. to 5:15 p.m., Monday, Wednesday, Thursday and Friday. In connection with the Onsite Supervisor duties, Ms. Mahmoud might work as late as 6:30 p.m.

On June 9, 2024, the employer suspended Ms. Mahmoud from the employment. The suspension was in response to Ms. Mahmoud inappropriately grabbing a three-year-old child in her care by the arm, forcing the child to the ground, and raising her voice to the child.

Effective June 12, 2024, the employer demoted Ms. Mahmoud from the Onsite Supervisor position and reassigned Ms. Mahmoud to work as a “floater.” The employer thereafter assigned Ms. Mahmoud to work in various rooms of the child care center as needed. Though the employer continued to call the employment full-time, the employer frequently sent Ms. Mahmoud home early, which reduced the number of work hours the employer provided to Ms. Mahmoud by roughly half.

Ms. Mahmoud’s toddler attended the child care center and that arrangement ended up being the basis for the employer’s decision to discharge Ms. Mahmoud from the employment. On Tuesday, August 6, 2024, Ms. Marquardt, the business owner, notified Ms. Mahmoud that Ms. Mahmoud needed to move her child to a different daycare as soon as possible and that the employer would no longer have a spot for Ms. Mahmoud’s child beyond Friday, which apparently meant Friday, August 9, 2024. Ms. Mahmoud’s daughter had recently come home from the daycare bearing scratches and had reported to Ms. Mahmoud that her daycare teacher was “mean.” Ms. Mahmoud had contacted the child care center to learn more about her child’s situation. Ms. Mahmoud had asked to review video surveillance of her child’s classroom. Ms. Marquardt denied Ms. Mahmoud’s request. During the August 6, 2024 contact with Ms. Mahmoud, Ms. Marquardt told Ms. Mahmoud that she had been in contact with other local daycare centers that confirmed open slots available for Ms. Mahmoud’s child. Ms. Marquardt pressed Ms. Mahmoud to state the date on which she would be removing her child from the employer’s child care center.

When Ms. Mahmoud reported for work on Wednesday, August 7, 2024, Ms. Marquardt discharged Ms. Mahmoud from the employment. At the time of the discharge, Ms. Marquardt asserted that the reason for the discharge was Ms. Mahmoud not being happy with the employer and Ms. Marquardt’s conclusion that Ms. Mahmoud did not belong in the daycare environment.

The employer cites as earlier concerns in the employment complaints about Ms. Mahmoud made by coworkers and by parents of children who attended the child care center. The most recent such complaint was made by a coworker on July 31, 2024. The coworker asserted that Ms. Mahmoud had been on her phone and not assisting during the children’s post-nap diaper change and snack time. Ms. Mahmoud had received an unexpected call from a ChildServe doctor regarding services for her autistic child, who had been on a waitlist for services for months. The next most recent complaint was a July 24, 2024 parent complaint alleging that Ms. Mahmoud did not greet the person’s child with enthusiasm when the child arrived at the three-year-old classroom.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In *Gilliam v. Atlantic Bottling Company*, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee’s second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The evidence in the record establishes an August 7, 2024 discharge for no disqualifying reason. The evidence fails to establish a current act of misconduct. The employer discharged Ms. Mahmoud in response to the employer’s decision to remove Ms. Mahmoud’s child from the employer’s care and in response to Ms. Mahmoud inquiring about possible mistreatment of her child while in the employer’s care. The situation that triggered the discharge did not pertain to misconduct on the part of Ms. Mahmoud in connection with the employment. The most recent conduct issue had been Ms. Mahmoud’s phone use on July 31, 2024. However, given the nature and circumstances of the call, Ms. Mahmoud had a good cause basis for taking the call. Taking the call did not amount to misconduct in connection with the employment. The next most recent alleged conduct that factored in the discharge concerned a July 24, 2024 allegation that Ms. Mahmoud had not greeted a child with enthusiasm upon the child’s arrival at the child care center. Such conduct, even if proven to be true, would not rise to the level of misconduct in connection with the employment. Ms. Mahmoud is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The August 27, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on August 7, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

October 7, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.