

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S MYERS
Claimant

APPEAL NO. 08A-UI-04482-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUCAS COUNTY HEALTH CENTER
Employer

**OC: 04/06/08 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Lucas County Health Center filed an appeal from a representative's decision dated April 28, 2008, reference 01, which held that no disqualification would be imposed regarding Melissa Myer's separation from employment. After due notice was issued, a hearing was held by telephone on May 22, 2008. The employer participated by Marian Holmes, Human Resources Director; Karen Mundt, Director of Childcare; and Veronica Fuhs, CEO. Ms. Myers did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Myers was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Myers was employed by Lucas County Health Center from March 14, 2006 until April 2, 2008. She was employed full time as a child care teacher. On March 31, 2008, a coworker reported certain inappropriate conduct on Ms. Myers' part.

The coworker reported that Ms. Myers had hit a one-year-old on the mouth after the child bit another child. The coworker reported that the contact caused the heads child to move backwards. She also reported that Ms. Myers would spray water on children to keep them from falling asleep and that she threw balls at children with the intention of striking them. When questioned, Ms. Myers denied striking the child on the mouth. She acknowledged spraying water but indicated it was part of a teaching activity. The conduct of throwing balls was not addressed. As a result of her actions, she was discharged on April 2, 2008.

Ms. Myers filed a claim for job insurance benefits effective April 6, 2008. She has received a total of \$532.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Part of the reason for Ms. Myers' discharge was the fact that she struck a child. This conduct, standing alone, is sufficient to establish disqualifying misconduct.

Ms. Myers knew or should have known that she was not allowed to strike children in her care. Whether the child's parents used the same method to deter biting is irrelevant. The fact remains that the conduct was contrary to the standards the employer had the right to expect. The employer would be liable for legal damages in the event the striking caused injury to the child. Moreover, such conduct, if observed by other parents, could have resulted in the removal of children, as parents might not be inclined to leave their children in a setting where abuse was possible. The administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Myers has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 28, 2008, reference 01, is hereby reversed. Ms. Myers was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Myers has been overpaid \$532.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw