

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESA M SCOTT
Claimant

APPEAL NO. 09A-UI-01172-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEAUTIFUL BEGINNINGS
Employer

**OC: 08/10/08 R: 02
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge
Section 96.19-18-a(6)(a) – Definition of Employment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 23, 2008, reference 03, that concluded the claimant's discharge was not under disqualifying conditions. A telephone hearing was held on February 10, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Paulin participated in the hearing on behalf of Beautiful Beginnings with witnesses, Heathen Sulken and Kiya Thompson. Beautiful Beginnings raised the issue of not being an employer covered by the unemployment insurance law. Both sides agreed that the issue of whether claimant can be disqualified based on a separation from an entity covered under the unemployment insurance law could be decided and waived advance notice of the issue. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Is a claimant who separates from an entity not covered under the unemployment insurance law subject to disqualification under Iowa Code § 96.5-2-a?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

Beautiful Beginnings is a childcare center owned and operated by a Beautiful Savior Lutheran Church as part of its religious mission. The church and daycare do not have an unemployment account and do not pay into the unemployment insurance system.

The claimant worked as a teacher's aide for Beautiful Beginnings from October 13, 2008, to November 25, 2008. The claimant was informed and understood that under the work rules, an employee who physically abused a child, yelled at a child, or used an angry tone toward a child was subject to dismissal.

The claimant had been instructed that during naptime, the children were to lie down on their cots and be quiet. At naptime on November 25, 2008, one of the children was walking around. The claimant picked the two-year-old child under his arms and placed the child on the cot. She

told him that he needed to lie down and be quiet. The other teacher's aide in the room reported to the director that the claimant thrown the child on the cot forcefully and yelled at him to lie down and keep quiet, which was not true.

The director of Beautiful Beginnings, Jessica Pauline, discharged the claimant for picking up the child and putting the child down for a nap too roughly and raising her voice to tell the child to be quiet and lay down.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 10, 2008. She filed an additional claim for benefits after her separation from Beautiful Beginnings effective November 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether a claimant who separates from a job outside the definition of "employment" under the unemployment insurance law subject to disqualification under Iowa Code § 96.5-2-a.

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 been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible. (emphasis added).

Iowa Code § 96.19 is the "Definitions" section of chapter 96. Under Iowa Code § 96.19-18-a(5), the term "employment" includes "Service ... by an individual in the employ of a religious, charitable, educational or other organization." Iowa Code § 96.19-18-a(6)(a), however, goes on to state:

(6) For the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

The claimant performed service to a daycare center owned and operated by the Beautiful Savior Lutheran Church as part of its religious mission. Consequently, under Iowa Code § 96.19-18-a(6)(a), the term "employment" does not apply to the service performed by the claimant for Beautiful Beginnings. For this reason, Beautiful Savior Lutheran Church and Beautiful Beginnings have no unemployment insurance account and do not pay into the Iowa unemployment insurance system.

Principles of statutory interpretation require statutes that relate to the same subject matter to be construed together. *Northwestern Bell Telephone Co. v. Hawkeye State Telephone Co.*, 165 N.W.2d 771, 774 (Iowa, 1969) Since Iowa Code § 96.19 is the "Definitions" section of the unemployment insurance law, the term "employment" in the discharge statute Iowa Code § 96.5-2-a should have the same meaning as in Iowa Code § 96.19-18-a(6)(a). It follows then

that a claimant cannot be disqualified if she is discharged from a job that is not considered "employment" under the unemployment insurance law.

My research has not disclosed any Iowa cases on this question. My research has uncovered one case from New York on whether the term "employment" includes noncovered employment when deciding a claimant's qualification based on a separation from a job outside the definition of "employment" under the law. *Claim of Gruber*, 652 N.Y.S.2d 589 (N.Y. 1996) Under New York law, claimants are disqualified if they separate under disqualifying conditions from their "last employment" prior to the filing of an unemployment claim. The court applied the definition of "employment" found in the definitions section of the New York unemployment insurance law and concluded that "last employment" was limited to "covered employment." *Id.* at 594. The decision is persuasive and supports my conclusion that the claimant is not disqualified for separating from a job that is not considered "employment" under the unemployment insurance law.

Alternatively, I conclude the claimant's discharge was not proven to be for work-connected misconduct.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was credible and consistent that she did not forcefully put the child on the cot or yell at him. The employer's witness, Kiya Thompson, claims she saw the claimant reposition the child who was on the cot by picking him up by the arms and putting down forcefully. This seems unlikely. The claimant's testimony outweighs Thompson's. No willful and substantial misconduct has been proven in this case.

Beautiful Beginnings is not chargeable for benefits on this claim. It is not a base-period employer, and the evidence establishes it is noncovered employment.

DECISION:

The unemployment insurance decision dated January 23, 2008, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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