

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

TERESA A SCHELL
644 – 156TH AVE
MUSCATINE IA 52761

TERRENCE L MEALY
301 E 2ND ST
MUSCATINE IA 52761

Appeal Number: 04A-UI-12643-CT
OC: 10/31/04 R: 04
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Teresa Schell filed an appeal from a representative's decision dated November 22, 2004, reference 01, which denied benefits based on her separation from employment with Terrence Mealy, Attorney at Law. After due notice was issued, a hearing was held by telephone on December 16, 2004. Ms. Schell participated personally. The employer participated by Terrence Mealy, who offered additional testimony from Heather Collins, Administrative Assistant, and Cindy Fullerton, Legal Secretary.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Schell was employed by Terrence Mealy from May 7 until September 8, 2004 as a full-time secretary and receptionist. Mr. Mealy, in addition to his law practice, has a number of rental properties. Ms. Schell was to perform bookkeeping functions for both the practice and the rental business. She was also to collect rents and initiate eviction procedures when tenants were delinquent in paying rent. Ms. Schell was responsible for filing papers in office files, doing the banking, and paying bills.

Ms. Schell was discharged because she was not performing all of her duties timely and was making errors in the performance of some of her duties. She did not always initiate eviction procedures as required when tenants were one month behind in rent. At the time of separation, the employer found approximately ten tenants for whom evictions should have been initiated but had not. She also failed to maintain rental records up to date. Ms. Schell made numerous errors in maintaining the employer's financial books. The errors were always pointed out to her. She also failed to pay all bills timely.

When Ms. Schell made errors in the performance of her job, they were pointed out to her and attempts were made to re-train her. She was never warned in writing that her continued employment was in jeopardy for any reason. She was never told that she was going to be discharged if she did not make changes in her performance or conduct.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schell was separated from employment for any disqualifying reason. 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). In a voluntary quit situation, an individual must first give the employer notice of work-related problems and of the intention to quit if the problems are not corrected so that the employer has an opportunity to take corrective action and salvage the employment relationship. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The administrative law judge believes the same rationale is applicable in a discharge case. In other words, the employer must give the employee notice of work-related problems and the potential for discharge so that the employee has a reasonable opportunity to try to correct the problems and thereby save her employment. In the case at hand, the employer never put Ms. Schell on notice that her continued employment was in jeopardy. Therefore, she did not know that she needed to do something different in order to continue her employment. The employer had on-going knowledge of the deficiencies in Ms. Schell's work. Because she did not know that she was in danger of losing her job, Ms. Schell did not have a reasonable opportunity to make those changes necessary to avoid discharge.

While the employer may have had good cause to discharge Ms. Schell, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated November 22, 2004, reference 01, is hereby reversed. Ms. Schell was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b