

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA SWEARINGEN**

Claimant

**APPEAL NO. 11A-UI-06892-W**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DEPT OF HUMAN SERVICES**

Employer

**OC: 04/10/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a fact-finding decision dated May 13, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on July 26, 2011, in Ottumwa, Iowa. Claimant participated personally and was represented by Randall Stravers, attorney at law. Employer participated through Clark Williams, TALX representative. Employer Exhibits A through H and Claimant Exhibits 1 through 5 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds the following facts: Claimant worked for Iowa Department of Human Services in the Division of Children and Family Services (hereafter, DHS) in Mahaska County Iowa. She was employed as a full-time social worker. She was terminated on May 10, 2011 for failing to follow work directives set forth in a work plan, which had been most recently revised and dated on April 20, 2011. (Emp. Ex. B).

Jody Wolver became Ms. Swearingen's supervisor in October 2010. Prior to Ms. Wolver taking over as claimant's supervisor, claimant had always had satisfactory employment reviews. (Emp. Ex. 5). Ms. Wolver was concerned with Ms. Swearingen's files almost immediately after taking over as her supervisor. She initially placed Ms. Swearingen on a work directive or corrective action plan in September 2010. (Emp. Ex. H). After that, progressive discipline began and her corrective action plans were revised to reflect more specific directives. (Emp. Exs. C-G). On April 5, 2011, she was given a five-day suspension for failing to comply with the directives. (Emp. Ex. C). On April 20, 2011, her work plan was revised giving her specific directives. It is found, however, that many of the directives were unclear and confusing.

Ms. Swearingen made reasonable efforts to complete the paperwork-related tasks on the work directive. She had a significant work load that involved many duties, including travel and court appearances. These duties generally superseded her paperwork related responsibilities.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

It is the employer's burden to prove, by a preponderance of evidence, that the claimant committed intentional misconduct. This is a high burden. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer simply did not meet its burden of proof. While there is a significant paper trail that was presented at hearing, it is still unclear to the undersigned exactly what claimant failed to do in the performance plan that constituted a material breach of the employment contract. Instead of providing concrete examples of the claimant's breaches of the work plan, the employer provided summary conclusions that the claimant had not completed tasks. It should be noted that these matters were disputed in that there was some confusion about exactly what some of the directives meant or how to complete them properly. Moreover, the claimant was being pulled in many different directions with all of her work obligations. Claimant had difficulty managing all of her work assignments. She was not allowed to work overtime or work additional hours in order to keep up on her assignments.

It is clear that the claimant did have difficulty keeping up on her paperwork and that she did not complete this important work function to her employer's satisfaction. The undersigned is not questioning the employer's personnel decision. The conduct simply is not "misconduct" under Iowa law based upon the evidence that has been presented. The greater weight of evidence has established that Ms. Swearingen's inability to keep up on the work load was not an intentional act. Rather, it is more fairly characterized as a good-faith inability to complete and fully manage the assignments in accordance with the employer's expectations. As such, the claimant is eligible for benefits, so long as she meets all other eligibility requirements.

**DECISION:**

The representative's decision dated May 13, 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/kjw