

#### 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. Stange was employed by Detex, a debt collection agency, from July 11 until July 25, 2005. She was hired to work full time assisting in the collection of debts. As part of her training, Ms. Stange was initially performing skip-tracing, a task she had not performed prior to her employment with Detex. She was to use a variety of resources to obtain accurate information on debtors in order to locate them and begin collection activities. Her first two days were spent watching another individual perform the task and taking notes. Ms. Stange was initially told she was expected to perform one skip trace every 10 to 15 minutes. As of July 20, she was only averaging approximately four skip traces each hour. The employer also found problems with Ms. Stange's documentation of her skip-trace results. On one occasion, she listed names and telephone numbers of a debtor who was deceased but did not note the fact that the debtor was deceased.

The employer met with Ms. Stange on July 25 but was not intending to discharge her at that point. The employer felt she was ambivalent during the meeting about retaining her job. The employer felt that additional training and time on the job would not increase Ms. Stange's efficiency or proficiency and, therefore, the decision was made to discharge her before the expiration of her 90-day probationary period. In making the decision to discharge, the employer also considered the fact that she had been late reporting to work on a number of occasions. Ms. Stange was late on five occasions during the course of her employment. The tardiness ranged from 2 minutes to 40 minutes. The last occasion was on July 19 when she was 40 minutes late due to oversleeping.

There were also issues regarding the appearance of Ms. Stange's work area. There was improvement shown after the matter was brought to her attention. The employer also felt she was smoking in unauthorized locations, such as the front of the building. Ms. Stange was not warned that she was in danger of losing her job for any reason.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Stange 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). Ms. Stange was discharged because she could not meet the employer's standards during the probationary period. The work she was assigned to perform for Detex was not work she had performed in prior employment. She was only in the job for two weeks. The administrative law judge is satisfied that Ms. Stange was performing the work to the best of her abilities. An individual who is discharged because she cannot meet the employer's standards during a probationary period is not guilty of misconduct within the meaning of the law. See 871 IAC 24.32(5).

Ms. Stange was also discharged because of her repeated tardiness. The last occasion of tardiness was on July 19 but Ms. Stange was not discharged until July 25. The decision to discharge was not predicated on her attendance but on her lack of efficiency and proficiency in performing skip-tracing. Had she been more aggressive in trying to retain her employment during the meeting of July 25, she would have been retained in spite of her history of tardiness and in spite of other issues that surfaced during her employment.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish substantial and disqualifying misconduct, as that term is defined by the Iowa Employment Security Law. It was within the employer's prerogative to discharge Ms. Stange. However, conduct that might constitute grounds for discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). The employment contract signed by Ms. Stange provided that payment of all wages due at the time of termination constituted a satisfaction of all claims and liability she might have against Detex. This provision is not effective to preclude her entitlement to job insurance benefits. Any agreement to waive job insurance benefits is void. Iowa Code section 96.15.

DECISION:

The representative's decision dated August 22, 2005, reference 02, is hereby affirmed. Ms. Stange was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf