

**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**

**DENNICE K SVALESON
1310 TAMA
BOONE IA 50036**

**IOWA DEPARTMENT OF
TRANSPORTATION
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-07485-HT
OC: 06/19/05 R: 02
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

STATEMENT OF THE CASE:

The claimant, Dennice Svaleson, filed an appeal from a decision dated July 13, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 9, 2005. The claimant participated on her own behalf. The employer, Iowa Department of Transportation (IDOT) informed Iowa Workforce Development Appeals via letter dated August 3, 2006, that it did not intend to participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Dennice Svaleson was employed by IDOT from

December 10, 1999 until June 17, 2005. She was a full-time custodian working 9:00 a.m. until 6:00 p.m.

Ms. Svaleson was off work for a non-work-related medical condition beginning December 22, 2004 until April 4, 2005. She worked until May 5, 2005, at which time she began a period of unpaid sick leave. Her doctor released her to return to work without restrictions on June 9, 2005, and that information was sent to the employer. But a letter from her supervisor, Jeff Traub, crossed in the mail with that doctor's release. The letter from Mr. Traub was received by Ms. Svaleson on Saturday, June 11, 2005, and informed her that she would have to provide a doctor's statement excusing her from work for the period beginning May 5, 2005, and outlining the reason the unpaid leave was required. The information had to be provided no later than June 17, 2005.

The claimant tried to contact her doctor's office beginning Monday, June 13, 2005, but the doctor was on vacation. She told her employer the doctor was on vacation and was told to "do her best." She was finally able to get a statement from the doctor on June 17, 2005, around 5:00 p.m. and hand delivered to IDOT, but her supervisor had already left for the day. She has assumed she had until the end of her regular work day, 6:00 p.m., to provide the information.

She was notified by a letter dated June 17, 2005, that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant made every good-faith attempt to comply with the requests from the employer to provide the information from her doctor. Ms. Svaleson cannot be held accountable for the absence of her doctor. In any event, she had the information ready for her supervisor by the end of her regular work day, 6:00 p.m. on June 17, 2005, but Mr. Traub was not there to receive it. There is nothing in the record to support any finding that the claimant was discharged for any misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of July 13, 2005, reference 01, is reversed. Dennice Svaleson is qualified for benefits provided she is otherwise eligible.

bgh/kjw