

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BEVERLY M BOEDING**  
Claimant

**APPEAL NO. 10A-UI-08013-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LEE COUNTY**  
Employer

**OC: 04/25/10**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Lee County filed an appeal from a representative's decision dated May 27, 2010, reference 01, which held that no disqualification would be imposed regarding Beverly Boeding's separation from employment. After due notice was issued, a hearing was held on August 2, 2010 in Burlington, Iowa. Ms. Boeding participated personally and was represented by Gerald Goddard, Attorney at Law. The employer participated by Nancy Booten, County Recorder, and was represented by Brett Nitzschke, Attorney at Law. The hearing was concluded by telephone on August 17, 2010 with the same parties participating.

**ISSUE:**

At issue in this matter is whether Ms. Boeding was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boeding was employed by Lee County from August of 1984 until April 22, 2010. She was last employed full time as first deputy. She had been placed on suspension on April 8 pending an investigation of her computer usage. She was discharged due to violation of the computer usage policy and other county work rules.

The employer's internet policy does not prohibit all personal use. The policy allows for "incidental and occasional personal use." The policy does not define either "incidental" or "occasional." The policy does not limit when such personal use may occur. Ms. Boeding was discharged based on email she was sending beginning in February of 2010 following the appointment of Nancy Booten as the new county recorder. She was not happy with the appointment of Ms. Booten as she had hoped to receive the appointment herself. Some of her emails were disparaging of Ms. Booten.

The employer first became aware of Ms. Boeding's emails on or about February 22 and began monitoring her usage. On April 1, she sent an email to a coworker indicating that Ms. Booten

had been in the office that day. She told the coworker that she had told Ms. Booten that she had a 1:00 p.m. appointment and that and that she would need to be in the office by herself. Ms. Boeding acknowledged in the email that she did not have an appointment, that she only wanted Ms. Booten to be there by herself. She concluded the email with the comment, "I crack myself up." Nothing was said to her until she was suspended on April 8.

Ms. Boeding filed a claim for job insurance benefits effective April 25, 2010. She has received a total of \$5,236.00 in benefits since filing the claim.

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

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. Boeding was discharged based on allegations that she violated the internet usage policy and other county rules. The employer's policy does not limit the number of personal emails. The policy does not define "incidental" or "occasional" use. Nor does the policy limit usage to before and after work or during lunch and coffee breaks. Given the vagueness of the terms of the policy, it would be incumbent upon the employer to advise the employee when his or her usage has reached an unacceptable level.

The employer was at all times aware of the extent of Ms. Boeding's usage of the internet for personal email. The employer did not at any point advise her that her usage was considered above the limits intended by the policy. Therefore, the employer did not give her an opportunity to reduce her usage to an acceptable level so that she could be in compliance. The employer was also aware at all times of the content of her emails. She was never disciplined because the employer felt she was neglecting her work duties in order to send personal emails. For the above reasons, it is concluded that Ms. Boeding's use of the internet for personal emails did not constitute deliberate and intentional misconduct.

Ms. Boeding owed her employer the duty of honesty and loyalty. She breached that duty when she gave false information to her supervisor and undermined the employer's interest in providing service to the public. She deliberately told Ms. Booten that she had an appointment when, in fact, she did not. She gave the false information for the purpose of making sure Ms. Booten was alone in the office. Given the tenor of her other emails, it was clear that she did not think very highly of Ms. Booten's ability to perform tasks associated with the office. Ms. Boeding deliberately and intentionally left what she felt was an inexperienced person in the office for the sole purpose of seeing that she failed. Such a failure would mean that county residents were not getting the quality of service they were entitled to receive.

The administrative law judge concludes that Ms. Boeding's dishonesty of April 1 is sufficient to establish substantial misconduct. As the first deputy, she was expected to set the standards for others. For the above reasons, benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated May 27, 2010, reference 01, is hereby reversed. Ms. Boeding was discharged by Lee County for misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Boeding will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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