

**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**

**JEAN B BIVONA
1025 SALINGER AVE
CARROLL IA 51401-1344**

**AMERICAN HOME SHIELD CORP
c/o TALX CORPORATION
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-06452-CT
OC: 05/28/06 R: 01
Claimant: Respondent 1)**

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:

American Home Shield Corporation (AHS) filed an appeal from a representative's decision dated June 16, 2006, reference 01, which held that no disqualification would be imposed regarding Jean Bivona's separation from employment. After due notice was issued, a hearing was held by telephone on July 21, 2006. Ms. Bivona participated personally. The employer participated by Amy Platt, Human Resources Manager and Diana Marvin, Customer Service Supervisor. The employer was represented by Marcy Schneider of TALX UC eXpress. Exhibits One through Nine were admitted on the employer's behalf.

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. Bivona was employed by AHS from September 20, 1997 until May 31, 2006 as a full-time customer service representative. On May 26, 2006, she was handling a call from a homeowner regarding a water leak. The plumber was at his home and indicated that there was a stoppage rather than a leak. Ms. Bivona determined that the homeowner did not have coverage for the stoppage. At that point, she should have noted in the records that there was a stoppage rather than a leak, advised the customer of the lack of coverage and made arrangements for the plumber to collect the \$55.00 service fee from the customer. Instead, Ms. Bivona indicated she would make the work order go away.

Ms. Bivona contacted the office manager for the plumber, who agreed to cancel the work order and not collect the \$55.00 service fee from the homeowner. She did have the general authority to cancel work orders. She also had the authority to concede the service fee. Ms. Bivona did not follow the established procedure for conceding the fee because she did not want it to count against her total concessions. She did not document her conversations with the homeowner and plumber as required. She did not provide a written explanation of her actions in the record as required.

Ms. Bivona acknowledged that her actions in cancelling the work order were contrary to the employer's policy. She violated the policy with the intent of satisfying the customer. She felt the AHS individual who initially handled the matter with the homeowner should have confirmed that it was a stoppage rather than a leak. She felt that if the problem had been correctly identified, the customer would have been told he did not have coverage and a plumber would not have been dispatched. She did not want the customer to have to pay the \$55.00 service fee because of an error on the part of an AHS employee. She did not seek the advice of a supervisor in dealing with the matter.

Ms. Bivona received a verbal warning on May 11, 2006 after she failed to provide required documentation for two calls. On one occasion, she failed to document her conversation with a homeowner regarding a renewal. On another, she failed to document why she transferred a work order to a different vendor. There were approximately six other occasions on which the employer had spoken to Ms. Bivona concerning her lack of documentation. Three of the occasions were in 2004 and three were in 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bivona 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. Bivona's discharge was prompted by her handling of the call on May 26. The parties do not dispute that her actions were contrary to policy. The question then becomes whether her actions constituted a substantial disregard of the employer's interests and standards.

Ms. Bivona's intent on May 26 was to save the homeowner from having to pay a service fee for a plumber that should not have been dispatched since the homeowner did not have coverage for the problem that was identified. Her intent was to keep the customer satisfied with AHS.

She used poor judgment in resolving the matter in the manner she did and not involving a supervisor. The administrative law judge cannot conclude that her actions evinced a willful and wanton disregard for the employer's standards. Therefore, it is concluded that her handling of the call did not constitute an act of misconduct as that term is defined by law.

Ms. Bivona did fail to document her conversations with the homeowner and plumber on May 26. She had been previously warned about her lack of documentation. However, she had been led to believe that there would be further disciplinary action before she would be discharged as a result of not documenting properly. Although the employer had brought documentation failures to her attention, the employer apparently never felt the problem was so severe or recurrent as to require more progressive discipline. It is clear that the lack of documentation of the May 26 call would not have resulted in discharge (assuming the call had been handled properly and within policy). For the above reasons, the administrative law judge concludes that the lack of documentation does not establish disqualifying misconduct.

The administrative law judge has considered all of the evidence and the contentions of the parties. While the employer may have had good cause to discharge Ms. Bivona, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated June 16, 2006, reference 01, is hereby affirmed. Ms. Bivona was discharged by AHS but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/cs