**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

**CONNIE V FRALEY**
**347 GINNY LANE NE**
**CEDAR RAPIDS IA 52402**

**SDH EDUCATION WEST LLC**
**C/O JON-JAY ASSOCIATES INC**
**PO BOX 6170**
**PEABODY MA 01961-6170**

**Appeal Number: 06A-UI-00890-RT**
**OC: 12-11-05 R: 03**
**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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Connie V. Fraley, filed a timely appeal from an unemployment insurance decision dated January 13, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 9, 2006, with the claimant participating. The employer, SDH Education West LLC, did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing as instructed in the Notice of Appeal. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time general manager in charge of food services and the kitchen at Cornell College in Mount Vernon, Iowa, from August 19, 1984 until she was discharged effective December 16, 2005. The employer provides contract services for outsourcing of certain services to campuses, including college campuses. The claimant was employed by the employer pursuant to a contract between the employer and Cornell College to provide food service for the college campus. In early November of 2005 the claimant was told by her district manager, Jerry Bildstien, that Cornell College was no longer happy with the claimant's handling of the food services and wanted her replaced. They wanted to keep the contract with the employer, but they wanted the claimant to leave. The claimant asked if she could complete a couple of projects she had pending and this was approved. No particular date was specified as to the claimant's separation. The claimant felt that Cornell College wanted the claimant dismissed as soon as possible. When the claimant completed her projects she quit working for the employer on or about November 27, 2005. However, the employer's official date of the claimant's separation was December 16, 2005. There were no other positions available for the claimant with the employer, and no such offer of positions were made to the claimant. It was not possible to work for Cornell College under the employer after December 16, 2005. The claimant received some kind of vacation pay and severance pay and holiday pay through December 16, 2005. The claimant filed for unemployment insurance benefits effective December 11, 2005, but for the first two weeks, benefit weeks ending December 17 and 24, 2005, the claimant reported vacation pay in an amount that would be sufficient to cancel benefits for those two weeks. Thereafter the claimant continued to file for benefits but is shown as disqualified to receive unemployment insurance benefits as a result of a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was 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 credibly testified, and the administrative law judge concludes, that she was effectively discharged on December 16, 2005. The claimant was working for the employer at Cornell College in Mount Vernon, Iowa, providing management of food services. Cornell College wanted the claimant replaced and was adamant that it be as soon as possible. The claimant was granted permission to work until she had completed a couple of projects which were completed on or about November 27, 2005, which was the claimant's last day of work. The employer shows an effective date of the claimant's separation as December 16, 2005. Accordingly, the administrative law judge concludes that the claimant was discharged on December 16, 2005.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6 (2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer did not participate in the hearing and provide sufficient evidence of deliberate acts or omissions on the part of the claimant constituting a material breach of her duties and/or evincing a willful or wanton disregard of the employer's interests, and/or in carelessness or negligence in such a degree of recurrence so as to establish disqualifying misconduct. The claimant credibly testified that, after working for Cornell College since 1984, Cornell College was dissatisfied with her management of the food services and wanted a change. There is no evidence of any disqualifying misconduct on the part of the claimant. At most, the claimant was discharged for inefficiency, unsatisfactory conduct, or failure in good performance as a result of inability or incapacity, and this is not disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

DECISION:

The representative's decision of January 13, 2006, reference 01, is reversed. The claimant, Connie V. Fraley, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct.

kkf/kjw