

**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**

**BEATRICE B CLUPPER
7324 MAPLE DR
URBANDALE IA 50322**

**AMERICAN PLANNING ASSOCIATION
STE 1600 122 S MICHIGAN AVE
CHICAGO IL 60603-6107**

**DAVID MORSE
ATTORNEY AT LAW
505 5TH AVE
DES MOINES IA 50309**

**Appeal Number: 04A-UI-02437-H
OC: 02/01/04 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:

Beatrice Clupper filed an appeal from a decision dated March 1, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a telephone hearing was held in Des Moines, Iowa, on March 31, 2004. The claimant participated on her own behalf and was represented by attorney David Morse. American Planning Association was paged in the main waiting area at 9:59 a.m. and again at 10:14 a.m. No one was present and the employer did not 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: Beatrice Clupper was employed by American Planning Association from April 1991 until January 20, 2004. She was the full time executive director. On January 20, 2004, the chair of the planning and accreditation board, Christopher Harkness, called her on the phone and notified her that the "board had determined to undergo a transition," and she was to "pack up and get out." There was some reference to the association moving its location to Chicago, Illinois or Washington, D.C., and hiring a new director. Mr. Harkness further indicated, "The board has no interest in what you do."

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 record establishes the claimant was discharged by the chair of the supervising board of American Planning Association. The employer has failed to provide any evidence regarding why she was discharged. This is required under Iowa Administrative Code Chapter 871 IAC 24.32(4). The employer has failed to meet its burden of proof to establish substantial job related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of March 1, 2004, reference 01, is reversed. Beatrice Clupper is qualified for benefits provided she is otherwise eligible.

kjf/kjf