BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

MARY L SEWARD Claimant, and L A LEASING INC - SEDONA STAFFING Employer.	:	HEARING NUMBER: 08B-UI-04965 EMPLOYMENT APPEAL BOARD DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Mary L. Seward, worked for LA Leasing Inc./Sedona Staffing, a temporary staffing agency where she completed her second application (Tr. 2, 3) on January 7th, 2008 at which time she was assigned to a full-time position at Vangent, Inc. (Tr. 2)

On March 13th, the claimant contacted the employer to inform them that she did not have a GED, as required by the Vangent assignment that did work for the Department of Education. (Tr. 4, 12, 13-14) She had been in the process of obtaining her GED from an online service, and then from Kirkwood Leaning Center since 2005 when she first completed an application for Sedona. (7, 9, 10-11) When she informed Vangent about the matter, they instructed her to contact the employer if she was unable to

obtain a GED within 90 days. (Tr. 6-7) Ms. Seward contacted Sedona and was terminated for falsifying her work application.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2007) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

Iowa Code section 96.6(2) (2003) provides, in pertinent part:

> ... If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision in

finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The record clearly establishes that Ms. Seward indicated twice on her work application (November of 2005 and January 2008) that she had a GED. By her own testimony, however, she knew, or at the very least, should have known that she did not have a GED in both instances. In mid-March, when it came to light that she lacked this requirement, the employer promptly terminated her. The fact that she was, admittedly, 'still in the process' of getting her GED is probative that her actions were an intentional falsification of her work application.

871 IAC 24.32 (6)

> *False work application.* When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

While on its face, her falsification may not have "... endangered the health, safety or morals of the applicant or others...," her falsification could have potentially exposed the employer to liability for misrepresentation in holding out its employees as having attained a certain level of education when, in fact (as was the case with the claimant), she had no such credential. At a minimum, the employer could have been harmed by losing the contract with Vangent. For this reason, we conclude that the employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated June 17, 2008 is **REVERSED**. The claimant was discharged for disqualifying misconduct. Accordingly, she is allowed benefits provided she is otherwise eligible.

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall ***not*** result in an overpayment, nor shall the employer's account be charged. See, Iowa Code section 96.6(2) (2007).

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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John A. Peno

AMG/fnv