

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

LACEY D BLEIL
119 S CECELIA
SIOUX CITY IA 51106

DUNES FAMILY MEDICINE
612 SIOUX POINT RD
DAKOTA DUNES SD 57049

Appeal Number: 04A-UI-00021-CT
OC: 11/30/03 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:

Dunes Family Medicine filed an appeal from a representative's decision dated December 23, 2003, reference 01, which held that no disqualification would be imposed regarding Lacey Bleil's separation from employment. After due notice was issued, a hearing was held by telephone on January 26, 2004. Ms. Bleil participated personally. The employer participated by Lynn McAllister, Administrator/Office Manager, and Curtis Farrell, MD.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Bleil was employed by Dunes Family Medicine from October 1, 2002 until November 26, 2003. She worked full time as a medical records clerk and back-up receptionist. She was discharged from the employment.

The decision to discharge Ms. Bleil was due to the fact that a coworker tendered her resignation, citing problems with Ms. Bleil as the cause. The coworker, Joanne Wickham, complained that Ms. Bleil made disparaging remarks about her and others in the front office. Ms. Bleil acknowledged that she had made remarks about the lack of ability of others but stopped doing so after employees were admonished during a staff meeting not to engage in such conduct. Ms. Bleil was not the only person making such comments in reference to coworkers. Ms. Wickham also complained that Ms. Bleil was spending an inordinate amount of time using the internet for personal reasons during work hours. The office manager was aware of Ms. Bleil using the internet for personal use on one occasion but did not say anything to her about it.

Ms. Bleil was also discharged because she failed to clock out on two occasions when leaving the office to run personal errands. On September 2, 2003, she did not clock out when she left but did account for her personal time away when she submitted her time card. On September 16, she went next door to donate blood and did not know until she returned that the time away was considered personal time.

On October 13, Ms. Bleil was asked to assist in the training of front office staff but indicated she did not have the patience to train others. She asked if she could prepare a "cheat sheet" instead and was given permission to accomplish the training in this fashion. There were also complaints that Ms. Bleil threw charts into the basket used to transport them. The basket was situated between two desks and, if she had several on her desk, she would toss them into the basket. The office manager observed her doing this but did not make an issue of it. Ms. Bleil had not been notified that her continued employment was in jeopardy for any reason.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bleil 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Bleil was discharged for a number of reasons. She heeded the employer's warning about making comments relative to the work abilities of others. The employer did not present any first-hand testimony to establish that such conduct continued after the staff meeting in which the issue was raised. Although Ms. Bleil did use the internet for personal reasons, she did not spend the amount of time complained of by her coworker. If using the internet was prohibited by the employer's policies, the office manager had the opportunity to remind Ms. Bleil of this when she observed the conduct. Given that the office manager did not say anything, it was reasonable for Ms. Bleil to assume that periodic, short-term usage was permitted.

Ms. Bleil did fail to clock out when leaving the office for personal business on September 2. However, she did not seek payment for the time as she accounted for it on her time card. Because she was donating blood as part of a blood drive on September 16, it was reasonable

for her to assume that she did not have to clock out to go next door to donate blood. The evidence failed to establish that Ms. Bleil threw charts in anger or frustration. She tossed them into the cart as a convenience. If her conduct in this regard was contrary to the employer's expectations, the office manager had the opportunity to put her on notice when she observed her tossing charts into the basket.

The administrative law judge has considered all of the evidence and the contentions of the parties. Although Ms. Bleil may have been an unsatisfactory employee, the evidence failed to establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. Because she had not been personally warned that she was engaging in conduct which might lead to her discharge, she did not have a fair opportunity to correct her conduct and preserve her employment. The employer brought out the fact that Ms. Bleil was an at-will employee. The administrative law judge recognizes the employer's right to discharge Ms. Bleil. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated December 23, 2003, reference 01, is hereby affirmed. Ms. Bleil was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b