

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

TRACEY D STEVENS  
3508 – 68<sup>TH</sup> ST  
URBANDALE IA 50322-3421

FOUNDATION FINANCE INC  
2199 GRAND  
WEST DES MOINES IA 50265

Appeal Number: 06A-UI-07964-DWT  
OC: 07/09/06 R: 02  
Claimant: Respondent (4)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

Foundation Finance, Inc. (employer) appealed a representative's August 3, 2006 decision (reference 01) that concluded Tracey D. Stevens (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer discharged the claimant for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant on June 24, 2006, for work-connected misconduct?

Did the claimant voluntarily quit her employment on May 19, 2006, for nondisqualifying reasons?

FINDINGS OF FACT:

The claimant started working for the employer on December 16, 2005. The claimant worked as a full-time loan originator. On May 19, 2006, the claimant voluntarily quit her employment because she had accepted another job. The claimant began her new job the week of May 22.

The claimant's new job did not work out and the claimant asked the employer to rehire her. The claimant returned to work for the employer the first week of June under a new pay agreement. Based on the agreement, the claimant expected a payment of over \$2,000 after she closed a loan on June 19, 2006. On June 24, the claimant learned the employer was going to withhold her commission because the claimant's sister owed the employer money. The employer also informed the claimant she was discharged because she was not closing enough loans.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant quits because she has accepted other employment, the claimant is not disqualified from receiving unemployment insurance benefits and the employer's account will not be charged. Iowa Code § 96.5-1-a.

There are two employment separations in this case. The first occurred on May 19, 2006, when the claimant quit after she accepted other employment. When the claimant quit on May 19, the reasons for her employment separation on this date determined whether the employer's account would be exempt or subject to charge during her current benefit year. Therefore, based on Iowa Code § 96.5-1-a and during the claimant's current benefit year, the employer's account will not be charged.

The second employment separation occurred on June 24, 2006, when the employer discharged the claimant. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct,

unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the employer discharged the claimant because, as of June 24, the employer was not satisfied with the claimant's work performance. The employer may have discharged the claimant for business reasons, but the facts do not establish that the claimant intentionally or substantially disregarded the employer's interests after the employer rehired her in June. The the claimant did not commit work-connected misconduct. As of July 9, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 3, 2006 decision (reference 01) is modified in the employer's favor. There are two employment separations in this case. The first on May 19, 2006, occurred when the claimant accepted other employment. As a result of this separation, the employer's account will not be charged during the claimant's current benefit year. The second employment separation occurred on June 24 after the employer rehired the clamant. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 9, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

dlw/kjw