

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JUDITH E LAMAR
Claimant

APPEAL NO. 08A-UI-02882-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 02/10/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Judith Lamar filed an appeal from a representative's decision dated March 13, 2008, reference 01, which denied benefits based upon her separation from SDH Services, Inc. After due notice was issued, a hearing was held by telephone on April 8, 2008. Ms. Lamar participated personally. The employer participated by Russ Moore and Timothy Bissett.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 30, 2006 until February 8, 2008 when she was discharged for excessive unexcused absenteeism after being warned. Ms. Lamar was employed as a full-time cook and was paid by the hour. Her immediate supervisor was Timothy Bissett.

The claimant was discharged from her employment with SDH Services West, LLC after she failed to report for scheduled work on February 8, 2008 because she was "too tired" to report to work that morning. The claimant had been "detained" by police in the state of Missouri apparently because of improper motor vehicle documentation. After being detained for approximately one-half hour, the claimant continued to her home but did not report for work and did not directly notify her employer of her impending absence. The claimant called a family member at approximately 2:30 a.m. instructing the family member to call in for her and inform the employer that she had been detained by the police in Missouri.

Because the claimant had been previously warned for excessive absenteeism and was aware that her employment was in jeopardy, a decision was made to terminate Ms. Lamar from her employment based upon her previous unacceptable behavior and the final incident when she did not provide proper notification or report to work on February 8, 2008.

It is the claimant's position that her discharge should not be considered to be for misconduct as she "just didn't show up for work."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant's discharge from employment took place under disqualifying conditions. It does. The evidence in the record establishes that Ms. Lamar had previously been warned and suspended for excessive absenteeism and was aware of the company's notification requirements and was aware that continued unexcused absences could result in her termination from employment. Ms. Lamar was discharged when she chose not to report for scheduled work on February 8, 2008 because she was "too tired." The claimant did not personally contact her supervisor as required by company policy but relied upon a family member to call in.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 13, 2008, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs