

**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**

**TRISHA KRUSE  
2112 S NICOLLET  
SIOUX CITY IA 51106**

**MID-STEP SERVICES INC  
4303 STONE AVE  
SIOUX CITY IA 51106**

**ATTORNEY JAY SMITH  
PO BOX 1194  
SIOUX CITY IA 51102-1194**

**Appeal Number: 05A-UI-05994-BT  
OC: 05/15/05 R: 01  
Claimant: Appellant (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-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Trisha Kruse (claimant) appealed an unemployment insurance decision dated May 31, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Mid-Step Services (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2005. The claimant participated in the hearing with Attorney Jay Smith. The employer participated through Jan Hackett, Human Resources Coordinator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 10, 2003, as a full-time dietary aide for a non-profit agency that provides 24-hour service for mentally/physically challenged adults and children. She was promoted to a cook on February 29, 2004, even though she knew she had to have a high school diploma and did not have one. The claimant was suspended and placed on a final warning on April 22, 2005, for her fourth incident of disruptive behavior. She was discharged on May 16, 2005, as a result of her inability to get along with a coworker.

Shortly thereafter, the employer discovered the claimant did not have a diploma, which meant she was not qualified for the cook position. The employer agreed to negate the termination and the claimant was again an employee in a dietary aid position as of June 9, 2005. However, she is pregnant and both parties agreed she would return to work after having the baby. She is currently on leave under the Family Medical Leave Act (FMLA).

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The evidence provided by the employer does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. Work-connected misconduct has not been established in this case and benefits are allowed from May 16, 2005 through June 9, 2005, provided she is otherwise eligible.

As of June 9, 2005, the claimant was reinstated as an employee and is currently on non-work-related medical leave pending the birth of her child. Benefits are denied as of June 10, 2005.

DECISION:

The unemployment insurance decision dated May 31, 2005, reference 01, is modified in favor of the appellant. The claimant was discharged, but misconduct has not been established. Benefits are allowed from May 16, 2005 through June 11, 2005, provided the claimant is otherwise eligible. The claimant was reinstated and is on medical leave. Benefits are therefore denied as of week ending June 18, 2005.

sdb/kjw