

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL C DIXON**  
Claimant

**APPEAL NO. 11A-UI-05059-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH SERVICES WEST LLC**  
Employer

**OC: 03/13/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's April 5, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Paul Brenneman, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in 2009. The employer considered him a full-time employee. He worked in the dishroom and as a porter.

The claimant received a written warning in mid-December 2010 for reportedly swearing in the cafeteria. After co-workers and a supervisor complained about the claimant's attitude on February 13, the employer gave him another written warning on February 18. This written warning informed the claimant he could not slam trays or yell at co-workers even if he had a bad night. The employer also informed that a comment, "I could go Columbine on this place," could be taken as a threat, which the employer did not tolerate.

On March 10 after a supervisor, Carrie, told the claimant to go home because she was tired of his attitude, the claimant reported the incident to another supervisor. Before Carrie told him to go home, a plate had slipped out of the claimant's wet hands and broke when it fell to the floor. On March 10, the claimant did not yell at Samantha nor had he banged any carts or doors.

After the plate broke, the claimant swept up the pieces. He then went to get carts in another area. When he got off an elevator with carts, Carrie told him to go home because he had not

gotten her permission to get the carts and she was tired of his attitude. After Carrie sent the claimant home, he contacted another supervisor to report Carrie's order that he go home.

On March 11, Brenneman received reports from Samantha, Carrie and Doris that the claimant was upset the night before and had yelled at Samantha, "Where the hell are you?" These coworkers also reported seeing the claimant kick shards of a broken plate he had either dropped or thrown. Samantha reported she was afraid the claimant would harm her.

When Brenneman talked to the claimant, he admitted he had been frustrated on March 10, because he felt he was doing all the work. The claimant explained that he accidentally dropped and broke a plate because his hands were wet. The claimant denied he slammed any carts and doors on March 10.

The employer believed the three employees' reports and discharged the claimant for again exhibiting abusive and threatening behavior toward co-workers on March 10 when he had already been warned about this type of conduct.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

Since Brenneman did not personally observe what happened on March 10, he relied on the reports from employees who were present. Although he had the opportunity to talk to each of these people, they did not testify at the hearing. As a result, the employer presented hearsay information at the hearing. Since the claimant's testimony is credible, his version of what happened on March 10 must be given more weight than the employer's hearsay information. The credible evidence does not establish that the claimant used abusive language or even acted in a threatening manner on March 10. He accidentally broke a plate and cleaned it up. While he may have been frustrated because he thought other co-workers should be in the dishroom helping him, the facts do not establish that he intimidated any co-worker that night.

Even though the employer discharged the claimant for business reasons, the facts do not establish that the claimant committed work-connected misconduct. As of March 13, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 5, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 13, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw