

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTA J HARPER
Claimant

APPEAL NO. 13A-UI-01844-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 12/30/12
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated February 5, 2013, reference 03, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 13, 2013. The claimant participated personally. The employer participated by Ed Higgins, manager. The record consists of the testimony of Marta Harper and the testimony of Ed Higgins.

Part way through the hearing, the claimant dropped out of the telephone conference. She was shopping for groceries at the time she was called for her hearing. The administrative law judge called the claimant back and got voicemail. A message was left for the claimant to immediately call the Appeals Bureau so that she could rejoin the hearing. The claimant did not call and the hearing proceeded without the claimant's participation.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a food services company. One of the employer's clients was Continental Western and the claimant worked onsite as a utility and prep cook. She was a full-time employee. Her last day of work was December 5, 2012. She was terminated on December 6, 2012. Her formal termination date was January 11, 2013.

During early December 2012, the employer was doing a lot of catering events. The employer had also received a complaint about the claimant being rude to a customer and preparing her eggs improperly. Ed Higgins, the manager, wanted to finish up the catering and speak with the claimant about the customer's complaint. Continental Western had asked that the claimant no longer work at its site. Mr. Higgins asked the claimant to get a punch bowl ready while he went

to the store to buy some more pineapple juice. When he returned the claimant was sitting out in the cafeteria and had not prepared the punch bowl. She began argumentative and very angry. Mr. Higgins asked her to leave. She took off her security badge and left.

The claimant returned the next morning and was told by Mr. Higgins that she was terminated. There had been ongoing problems with the claimant's attitude since May 7, 2012. She had gotten into a verbal argument with a customer. Continental Western wanted her removed at that time but Mr. Higgins had prevailed upon the customer to allow him to work with the claimant on improving her customer skills.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the duties owed by an employee to an employer is geniality and civility in the workplace. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant had an ongoing problem with rudeness to customers. It was serious enough that the employer's customer had asked back in May 2012, that the claimant not work at the customer's site. The employer tried to work with the claimant but the problems persisted. On December 5, 2012, the claimant disobeyed an instruction from the employer that she prepare a punch bowl and then became argumentative and angry with the employer. In addition, another customer complaint led to a request that the claimant no longer work at Continental Western. The claimant's actions show a deliberate disregard of the employer's interest in providing good customer service. In addition she failed to follow her employer's instructions on December 5, 2012. This is insubordination, which is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 5, 2013, reference 03, is modified without effect. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs