

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORGAN E BOMKAMP
Claimant

APPEAL NO. 10A-UI-13746-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 09/05/10
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 30, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 17, 2010. Claimant participated. Employer participated through Operations Manager Val Stubert and general manager Howard Silberstein. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a food server and was separated from employment on October 14, 2010. Her last day of work was September 7. Claimant is age 17. She has bipolar disorder, which does not affect her ability to work and has not caused her to miss work. She also has a learning disorder so she asked for help with a packet of training information early in the employment and was accused of insubordination. Coworker Val pushed her while she was doing her job so she became upset. She did not want to go into the office because Stubert was "screaming" at her and she was upset and crying. Stubert pushed her into her office and told her to go home until she could prove she has bipolar disorder. This would have required a \$30.00 medical documentation fee not covered by insurance. Although claimant told the employer she could not afford the fee, employer did not offer to pay the cost. There was no time limit for retrieval of the documentation. She went in the next Thursday she talked to Masoud who told her to "bill herself." Employer sent her a certified letter for which she signed on October 21, 2010. The employer advised her she was off the schedule and they had covered her shifts. Claimant did not tell employer that she had not taken her medications for months and did not make racial slurs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was reasonable given the circumstances of having been physically pushed and then berated. Since she could not afford the documentation fee, employer has not established she did not provide the documentation deliberately. Thus, benefits are allowed.

DECISION:

The September 30, 2010 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css