

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA L PIERSON**  
Claimant

**APPEAL NO. 12A-UI-12645-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH SERVICES WEST LLC**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 12, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 26, 2012. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through regional manager, Mike Gilliland and custodial manager, Melissa Gansemer.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a housekeeper on the 11:00 p.m. to 7:30 a.m. shift and was separated from employment on September 14, 2012. At 7:00 a.m. on August 29, 2012 she refused to walk with Gansemer to go over the areas she had cleaned during the shift. She refused because her shift was about to end. She left between 7:15 and 7:30 a.m. Gansemer inspected the areas and found many deficiencies in cleaning. The employer had problems with her cleaning thoroughness in the past for which she had been warned on October 21, November 7, 2011, March 8, March 19, and February 22, 2012. The 17-day delay in discharge from the final incident date was largely due to a delay from human resources as Gansemer outlined the insubordination and job performance deficiencies in her August 29 e-mail to Gilliland. Pierson told Gilliland she did not go with Gansemer because she “did not feel like it.”

**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.

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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that her conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. EAB*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Although the claimant did engage in a final act of misconduct by her deficient cleaning on the shift ending August 29 and by her refusal to review the areas with her supervisor, inasmuch as employer knew of the incident the same day, and delayed the discharge by 17 days because of waiting for authorization from human resources and the Labor Day holiday on September 3, the act for which the claimant was discharged was no longer current. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

**DECISION:**

The October 12, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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