

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARRIE L RYAN
Claimant

APPEAL NO: 07A-UI-04438-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 04/01/07 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 17, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on May 31, 2007. The claimant participated personally, with Danny Cornell, attorney at law. The employer participated through David Watt, general manager. Exhibits 1 and 2 were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her employment.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for this employer from September 8, 1999 until March 20, 2007 when she was "laid off" due to unsatisfactory work performance. Ms. Ryan held the position of chef manager. She was employed on a full-time basis and was paid by salary. Her immediate supervisor was David Watt.

Ms. Ryan was separated from her employment when the employer believed that the claimant had not made sufficient progress in eliminating a number of employer concerns about the claimant's job performance. Ms. Ryan had previously been considered a good employee and had received positive work evaluations. The employer desires that managers enhance their employment skills through internal training and testing. The claimant most recently had been unable to satisfactorily pass internal testing requirements through no fault of her own. The employer was also dissatisfied as interpersonal relationships in the kitchen were unharmonious. The claimant was counseled in January 2007 to improve areas of employer dissatisfaction, to improve her completion of paperwork and tray testing. Although Ms. Ryan made a considerate effort to improve her performance, she did not reach the level of competence desired by the company and was separated from employment. At the time of separation the claimant received a "lay-off" notification citing job performance as the basis for the claimant's separation from employment.

It is the claimant's position that her inability to meet employer expectations was caused in part by lack of staffing and other job responsibilities which prevented the claimant from devoting more time to areas of employer dissatisfaction.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged when she was unable, through no fault of her own, to meet increasing employer expectations regarding her work performance. The evidence in the record establishes that Ms. Ryan in the past had been able to meet employer work expectations and that the claimant had improved her performance in a number of areas of dissatisfaction at the time of discharge. These are factors largely beyond her control. The claimant, however, was unable to reach all goals set by her employer. The claimant was unable to take a sufficient number of tray samples because of other job responsibilities. The claimant was unable to pass increased testing due to difficulties with the examination process. Ms. Ryan was unable to eliminate disharmony in the kitchen area due to the individuals involved.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for these reasons, but whether the discharge is disqualifying. A decision to terminate Ms. Ryan may have been a sound decision from a management viewpoint, but for the above stated reasons the administrative law judge does not find that the claimant's conduct rose to the level of intentional disqualifying misconduct in connection with her work. Benefits are allowed.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

DECISION:

The representative's decision dated March 17, 2007, reference 01 is hereby affirmed. The claimant was discharged under non-disqualifying conditions. The claimant is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/pjs