

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWNA M ROBINSON**

Claimant

**APPEAL NO. 12A-UI-02944-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIARY FARMERS OF AMERICAN INC**

Employer

**OC: 08/21/11**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Dairy Farmers of America, Inc. (DFA), filed an appeal from a decision dated March 12, 2012, reference 02. The decision allowed benefits to the claimant, Shawna Robinson. After due notice was issued, a hearing was held by telephone conference call on April 25, 2012. The claimant participated on her own behalf and was represented by Roberta Chambers. The employer participated by Plant Superintendent Netta Jorgensen and Plant Manager John Van Der Hulle and was represented by ADP in the person of Liz Sillars.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Shawna Robinson was employed by DFA from March 29, 2010 until January 25, 2012 as a full-time lab technician. She performed her job duties satisfactorily for the first 11 months of her employment and then she began to make errors.

She received written warnings on May 9 and July 9, 2011 for sending incorrect samples to the outside lab and without sufficient volume for testing. She had received numerous verbal warnings after that final warning about various problems with paperwork, checks not being performed, out of spec results on reports not being hi-lited, incorrect sample numbers on paperwork, did not request the correct tests, and other problems. The final written warning was given July 9, 2011, and two days later she admitted to the employer she had a learning disability. She said it would help if things were written down and the employer agreed. At no time did she ever complain further that the accommodations were insufficient. If she had any further questions she would go to her supervisor or manager and they would answer her questions and help her to the best of her ability.

A new supervisor, Kevin Ozkal, was hired and he began to enforce the disciplinary policy and issued these warnings. Ms. Robinson said she felt she had a “target on her back” because of these warnings, but other employees received warnings when they made the same mistakes. She felt Mr. Ozkal was “harassing her” because when he interviewed a friend the claimant had recommended, he suggested he should take the claimant, her daughter, the interviewee and her daughter out to dinner. The claimant refused and the subject was never brought up again.

The new supervisor had a different approach to work and disciplinary action and Ms. Robinson had difficulty adjusting to this. She asked a human services representative to intervene to facilitate communication and harmony between her and Mr. Ozkal. She was asked if she had talked to the supervisor directly and she said she had not. The representative then referred her to Plant Superintendent Netta Jorgensen first. Ms. Jorgensen said she would deal with it and a few weeks later, after observing the two of them interacting, did talk with Mr. Ozkal. Ms. Robinson never complained again even when Ms. Jorgensen asked her how things were going. She had responded "things were better."

She also objected to Mr. Ozkal asking her why she needed a day off to see a doctor. Her schedule was four days on and four days off and he stated he felt someone with that schedule should be able to get a doctor's appointment on a day off. She accused him of "talking behind her back" because he told the technician on the other shift to leave some work for her because she had taken a day off and should do her share of the work.

Her personal relationship with her fiancé ended about the same time she began to have performance problems at work. At one point she did tell Ms. Jorgensen she was "having personal problems" and it seems her relationship's dissolution was common knowledge. She also felt Mr. Ozkal was harassing her because he stated he did not like her fiancé. She admitted on the response to one of the written warnings she did not want to make the problems in her personal life as an excuse.

Ms. Robinson believed she was being discriminated against because her disability was not being properly accommodated. But at no time did she bring any documentation to human resources along with a doctor's recommendation for accommodations. She believed she should not have to ask any more after telling her manager she had the disability. The evaluation of the doctor was ten years old and it stated there was a possibility of further improvement in the next few years. The claimant did attend college after the injury that caused her disability.

She was discharged on January 25, 2012, after an investigation into an incident on January 18, 2012, where she sent four samples to the outside lab for testing when the protocols require five samples. The claimant admitted she had made the mistake but believed her overly emotional state of mind should be sufficient reason for excusing the error.

Shawna Robinson has received unemployment benefits since filing an additional claim with an effective date of January 22, 2012.

#### **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.

The claimant was discharged for mistakes that she acknowledged making after receiving warnings. Her defense was that she was bothered by her new supervisor and was constantly upset. She alleged harassment, but none of the examples she provided constitute harassment, merely a conflict of personality. In addition, it is apparent her personal problems were also contributing substantially to her stress. These began around the same time as the new supervisor was hired and her work performance declined.

She made the mistakes which cost the employer time, money and quality. While it is obvious Ms. Robinson is a very high-strung and overwrought person, she was still required to perform her job duties as expected. The administrative law judge cannot conclude her supervisor was harassing her simply because he enforced the disciplinary policies, expected good work quality, and a personality conflict existed between them. Asking her and her daughter and a friend and her daughter out to dinner was a polite invitation that was never repeated after she refused. In addition, she made no formal charge of harassment against her supervisor with human resources and she acknowledged things were better after the plant supervisor talked with Mr. Ozkal. No claim of discrimination was ever filed on the basis of her disability. She did not go to human resources with the formal documentation and request specific accommodations because of her disability. For reasons which were not entirely clear, she felt once she told Ms. Jorgensen and Mr. Ozkal about her learning disability it was then entirely their responsibility to resolve the problem without any further input, feedback, or suggestions from her.

Her problems with stress could have been handled in other ways, such as asking for a leave of absence or family medical leave, but she never did so. Her personal life was obviously a large factor in her stress. While it is unfortunate, it does not relieve her of the responsibility to perform her job duties as required. She was capable of doing her job, as evidenced by her good performance in the early months of her employment. Failure to work to the best of one's ability is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the

benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of March 12, 2012, reference 02, is reversed. Shawna Robinson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw