

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE L HOLMES
Claimant

APPEAL NO: 06AUI-08650-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 07/30/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

SDH Services West LLC (employer) appealed a representative's August 23, 2006 decision (reference 01) that concluded Vickie L. Holmes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2006. The claimant participated in the hearing with her witness, Barbara Holmes. Anne Dean and Antonia Rivers, the executive chef, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 13, 2005. The claimant worked part-time. During the last five to six months of her employment, the claimant worked as a dishwasher. Rivera was the claimant's supervisor.

At various times during the claimant's employment, she challenged Rivera. For instance, during a meeting, Rivera told employees that if dirty dishes were put away, they would be sent back to be cleaned again. Rivera understood the claimant would not re-wash any dirty dishes. Even though Rivera may have seen other employees re-wash dirty dishes, he did not see the claimant do this. There were times the claimant re-washed dirty dishes. Rivera concluded the claimant refused to re-wash any dishes that were returned dirty.

In mid-June 2006, Rivera concluded the claimant had not washed and mopped the walk-in cooler because the bucket used to wash floor had dirty water in it. Rivera believed the water in the bucket was the same water he had used the previous day. Based on this conclusion, Rivera believed the claimant could not have mopped the walk-in cooler as she was supposed to do.

The claimant, however, asserted she had mopped the walk-in cooler. When Rivera accused the claimant of lying to him, she indicated would not lie to him.

In late June 2005, the employer was being inspected by the State of Iowa. As a result of the upcoming inspection, on June 25 the employer called in other dishwashers to do some extra cleaning. The extra dishwashers were not asked to do any extra cleaning, they only washed dishes. The employer, however, asked the claimant to do cleaning jobs she would not usually be asked to do. The claimant did all the extra jobs the employer requested with the exception of cleaning the back steps with a toothbrush and getting on a three-rung ladder to get rid of mold in the corner of the walk-in cooler. The claimant told the employer she would not do either one of these assignments.

The claimant refused to get on a ladder to clean off mold because she was afraid of heights and getting on any ladder. The employer did not know about the claimant's fear of heights and ladders. The claimant thought it was unreasonable for the employer to require her to use a toothbrush to clean the back steps. As part of her regular job tasks the claimant cleans the back steps, but she used a big scrub brush.

After the claimant refused to clean the back steps and get rid of the mold in the walk-in, Rivera sent the claimant home early on June 25, 2006. When the claimant reported to work on June 26, the employer discharged her. The employer discharged the claimant because the employer was not satisfied with the claimant's job performance and because she refused to do two assigned tasks on June 25. Rivera also concluded that the claimant was not truthful.

Prior to June 25, the employer talked to the claimant about several issues but never gave her a written warning. Prior to June 25, the claimant had no idea her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. As of June 25, the employer-employee relationship had deteriorated to the extent the employer

concluded the claimant was not truthful. However, even though the employer concluded the claimant had not been truthful in mid-June, the employer did not discharge her at that time.

On June 25 the employer brought in extra employees and was in the process of doing some extra cleaning before a State inspection. The evidence indicates the employer asked the claimant to clean the back steps with a toothbrush and get on a three-rung ladder when the claimant was afraid of getting on a ladder. Since the person who assigned the claimant to clean the back steps was not at the hearing, the claimant's testimony as to what she was required to do is not disputed. Even if the employer knew the claimant was afraid of ladders and heights, it is doubtful the employer would not have still insisted the claimant get up on a ladder because she only had to get on the first rung of a three-rung ladder. The employer's characterization of the claimant left little doubt that Rivera did not get along with the claimant. While it is understandable why Rivera became very frustrated with the claimant on June 25, her refusal to complete unreasonable tasks does not amount to work-connected misconduct. Therefore, as of July 30, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 23, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 30, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw