

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KATHY A FOX  
APT #301  
2902 COTTAGE GROVE  
DES MOINES IA 50311

SDH SERVICES WEST LLC  
C/o JON-JAY ASSOCIATES INC  
PO BOX 6170  
PEADBODY MA 01961

Appeal Number: 06A-UI-06085-DWT  
OC: 05/14/06 R: 02  
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

SDH Services West LLC (employer) appealed a representative's May 31, 2006 decision (reference 01) that concluded Kathy A. Fox (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 July 11, 2006. The claimant participated in the hearing. Russell Moore, the general manager, Kristina Schulte, the claimant's supervisor on Sundays, and Jolene Retman, a co-worker, testified 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 employee in February 2004. The claimant worked as a full-time baker. On the weekends the claimant worked at the grill. Schulte was the claimant's supervisor only when the claimant worked during the weekend or one shift a week.

During the course of her employment, the claimant and other employees attended meetings concerning the way employees should talk to and treat co-workers. The claimant does not remember anyone specifically talking to her about making inappropriate comments about her co-workers. The claimant's personnel file does not indicate that the claimant received any written warnings for making inappropriate comments about co-workers. The claimant's file indicates notes managers recorded about some inappropriate comments the claimant made. Based on the notes in the claimant's file, the employer concluded a manager talked to the claimant in 2005 about inappropriate comments the claimant made about co-worker(s).

Schulte supervised the claimant for nine months, one day a week. During this time, Schulte heard various comments the claimant made about Schulte. Schulte did not appreciate some of the claimant's comments, which Schulte considered inappropriate. Schulte did not personally say anything to the claimant. Schulte strictly enforced food safety regulations and regularly talked to the claimant about wearing gloves while handling food.

On May 7, Schulte went to the claimant's area to pick up a late tray for a resident. Schulte noticed the claimant was not wearing gloves and reminded her to put on gloves. After Schulte left the area, she heard the claimant making derogatory remarks about Schulte. Schulte did not say anything to the claimant. About 20 minutes later, Schulte went to get another late tray and noticed a customer was waiting while the claimant was busy at the grill. Schulte asked the person if he needed any help. The claimant then came and indicated she could take care of the customer. Schulte understood the claimant was very upset with her. After the customer left, Schulte went to the claimant and explained that she had not meant to insult the claimant but had only been trying to help her when the claimant was busy doing something else. The claimant explained that she felt Schulte insinuated she had not been doing her job and had been personally attacking the claimant. Schulte again went to her office and said nothing more to the claimant. Schulte concluded the claimant did not like to take direction from her or any other supervisor.

After Schulte left, the claimant was very upset with her. Retman, the sous chef, noticed the claimant was angry and upset when she asked the claimant what was wrong. The claimant explained that Schulte thought she knew more than the claimant and had insinuated that the claimant was not doing her job. The claimant then used some derogatory comments about Schulte and indicated she was not going to follow the instructions of some kid.

Schulte reported the May 8 incident and comments to her supervisor. The employer investigated the incident by obtaining statements from Schulte and Retman. On May 14, 2006, the employer discharged the claimant for unacceptable and inappropriate conduct toward a supervisor on May 8, 2006.

## 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 section 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. The facts, however, establish that the claimant's conduct on May 7 was not out-of-the ordinary. Schulte knew the claimant did not like Schulte telling her what to do. In the past, Schulte reported comments claimant made about her that Schulte felt were inappropriate. The employer, however, never addressed problems of this nature with the claimant in any written warning. Since Moore took over as general manager in January 2006, there is no evidence anyone talked to the claimant about how she talked to or about co-workers or supervisors. Schulte did not even talk to the claimant about the comments she overheard the claimant make about her.

Prior to May 7, the claimant received some warnings for attendance and performance issues, but she had no idea her job was in jeopardy. The claimant previously made inappropriate comments and no one talked to her or warned her that her job would be in jeopardy if she continued to make such comments when she was angry or upset. Before a claimant can be discharged for work-connected misconduct, the employer must warn a claimant that such conduct is unacceptable and can put her job in jeopardy.

While the claimant's May 7 conduct is not acceptable, the facts do not establish that she committed work-connected misconduct. Therefore, as of May 14, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 31, 2006 decision (reference 01) is affirmed. The employer established compelling business reasons for discharging the claimant. The employer's reasons for discharging the claimant do not constitute work-connected misconduct. As of May 14, 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.

dlw/pjs