

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA DUKES
Claimant

APPEAL NO. 10A-UI-14429-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

OC: 08-08-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 14, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 16, 2011. The claimant participated in the hearing. Paul Brenneman, General Manager of Food and Nutrition; Cassie Menz, Clinical Nutrition Manager; and Angela Sloth, Clinical Dietician I; participated in the hearing on behalf of the employer. Employer's Exhibits One, Two, and Three, were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Food Service Worker I Diet Clerk for SDH Services West from September 12, 1997 to August 13, 2010. She worked at Broadlawns Hospital. Late last spring the employer instituted a new program requiring dietary employees to carry pagers with them while at work and the claimant signed the Contract of Understanding explaining that and other policies (Employer's Exhibit One). The claimant failed to carry her pager July 8, July 14, July 19, July 20, July 27, July 28 and August 10, 2010. The employer usually became aware the claimant did not have her pager with her when it checked the box where the pagers were kept and found the claimant's pager still there. On July 20, 2010, the Director of Nursing complained to the employer that she could not reach the claimant and that her nurses also complained of not being able to get a hold of the claimant on several occasions. On July 8 and July 27, 2010, Paul Brenneman, General Manager of Food and Nutrition, took the claimant's pager to her and reminded her of the policy. On July 29, 2010, the employer issued the claimant a final written warning detailing several issues with her work performance, including a section on Pager Check Out and Check In and USE (Employer's Exhibit Two). The last paragraph of the warning stated, "You must understand that failing that will result in further disciplinary action up to and including termination" (Employer's Exhibit Two). The claimant refused to sign the warning. On August 10, 2010, the claimant worked four hours into her shift without her pager, which was lying on the printer in the dietary office. Mr. Brenneman spoke to

the claimant about the issue and she admitted she left the pager in the office and was working without it in violation of the employer's policy. Consequently, the employer terminated her employment August 13, 2010 (Employer's Exhibit Three).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 current employer took over the dietary services of the hospital in 2008. Prior to that time the claimant had not received any warnings. While it can be difficult to adjust to a new employer and new standards and procedures, the employee still has a responsibility to follow those standards and procedures, even though they may be stricter than those of the previous employer. The final written warning detailed five areas of concern regarding the claimant's employment, including her failure to carry her pager. The claimant did not take her pager with her when she went on the floor on at least seven occasions between July 8 and August 10, 2010, and did not go back and get it after she realized, or should have realized, she did not have her pager. The hospital staff and her co-workers relied on being able to reach the claimant regarding patient meals on her pager, but many of their pages went unanswered, which resulted in diminished patient care. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of

behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 14, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw