IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CLAUDIA SWEET
Claimant

SDH SERVICES WEST LLC
Employer

APPEAL NO. 09A-UI-09300-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/17/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

SDH Services West, L.L.C. (employer) appealed a representative's June 17, 2009 decision (reference 02) that concluded Claudia Sweet (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2009. The claimant participated in the hearing. Paul Brenneman 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 4, 1995. For the majority her employment, she worked full time as a dietary clerk in the employer's food service at a Des Moines, Iowa hospital. Her last day of work was May 13, 2009. The employer discharged her on that date. The reason asserted for the discharge was making too many mistakes that could jeopardize patient safety and welfare.

The employer had given the claimant some verbal coachings in January 2009, but the only written warning given to the claimant prior to May 13 was on February 5, 2009. She was not advised that her job was in imminent risk. On May 13 the employer gave the claimant a number of written warnings for incidents in the past several weeks, with the most recent incident occurring on May 12. The employer asserted that the claimant had not ensured that a patient's food order was followed correctly by ensuring that a pork chop was "mechanically altered" for ease of swallowing, either by being pureed or by being cut up into fine pieces. The claimant denied that she was the aide who had been at the end of the line on that shift who would be required to review the tray before it went to the patient's room.

The employer also noted an incident on May 11 in which it asserted the claimant had not properly ensured that a patient's low-calorie, low-sodium, low-fluid dietary orders were being

followed. The claimant asserted that she was very aware of the needs of such patients and would not have approved the menu as was processed, which included a high sodium, high fluid soup.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is making too many errors relating to patients' dietary orders. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. Even if the claimant was in fact responsible for the final problems noted by the employer, there is no evidence the claimant intentionally failed to perform her duties to the best of her abilities. The claimant had not previously been effectively warned that future incidents would result in termination, so as to know that she needed to take greater care. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 17, 2009 decision (reference 02) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/kjw