

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

TILLIE O PROCYK  
2100 – 16<sup>TH</sup> ST  
DES MOINES IA 50314

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

Appeal Number: 04A-UI-09263-HT  
OC: 11/16/03 R: 02  
Claimant: Respondent (2)

**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 96.5-1 - Quit  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer, SDH Services West LLC (SDH), filed an appeal from a decision dated August 16, 2004, reference 03. The decision allowed benefits to the claimant, Tillie Procyk. After due notice was issued, a hearing was held by telephone conference call on September 21, 2004. The claimant participated on her own behalf. The employer participated by General Manager Dan Quinn.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tillie Procyk was employed by SDH from April 9, 1995 until July 11, 2004. She was a part-time food preparation worker.

On July 11, 2004, the kitchen was very busy. At least two scheduled employees were absent that day. Two supervisors, Reba and Tim, helped the claimant as much as possible to keep her from becoming too upset because of the work load. Around 9:00 a.m., Reba told the claimant a late tray would have to be prepared and the claimant asked if it could be delivered later. The supervisor said the dishes would have to wait because the tray was needed now. The claimant left without notice to anyone and did not return because she felt the supervisor was "yelling" at her.

Tillie Procyk has received unemployment benefits since filing a claim with an additional claim with an effective date of July 11, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The administrative law judge does not doubt that the work environment on July 11, 2004 was very hectic and stressful. The employer had no control over the fact two scheduled workers did not appear for work, however, the supervisors did what they could to alleviate the pressure on Ms. Procyk to keep her from being too overwhelmed. She was apparently upset that she was not able to get more help from other workers but there is no evidence anyone else was available at that moment to help her. Her decision to quit was apparently based on the supervisor raising her voice when telling the claimant no other help was available and the dishes would have to wait because the food tray was a higher priority.

If the supervisor did raise her voice, it is not the most appropriate conduct. However, this appears to have been an isolated incident in regard to Ms. Procyk, the supervisor was possibly as stressed as the claimant due being short handed. It was an isolated incident which, if the claimant had raised her voice to the supervisor, would not have been sufficient to disqualify her from receiving benefits had she been discharged. The claimant could have complained to another supervisor, brought her concerns to the attention of the general manager, or told the supervisor she did not intend to be spoken to in that manner. She did none of these, nor did she inform anyone she intended to quit unless her concerns were addressed as required by Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of August 16, 2004, reference 03, is reversed. Tillie Procyk is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,566.00.

bgh/tjc