

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA SIMBRO

Claimant

APPEAL NO. 08A-UI-03595-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST

Employer

**OC: 03/09/08 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

SDH Services West (SDH) filed an appeal from a representative's decision dated April 4, 2008, reference 02, which held that no disqualification would be imposed regarding Sara Simbro's separation from employment. After due notice was issued, a hearing was held by telephone on April 29, 2008. The employer participated by Tom Singer, General Manager. Ms. Simbro did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Simbro was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Simbro was employed by SDH from December 17, 2007 until February 15, 2008. She was hired to work full time in kitchen prep. She was hired with the understanding that she would be on probation for the first 90 calendar days.

On February 15, Ms. Simbro was notified that she was being removed from the position of kitchen prep. She had not demonstrated the ability to perform the job to the employer's satisfaction. Her knife skills were such that the employer did not feel she could safely perform the job. As an alternative, Ms. Simbro was offered the position of dishwasher. There would have been no changes in her pay or other benefits if she accepted the dishwasher position. She declined the change because it was not the type of work she wanted to perform. Therefore, she became separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

Ms. Simbro was hired to work in kitchen prep but that position was no longer available to her as of February 15, 2008. She was, in essence, discharged from the position of kitchen prep. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Ms. Simbro was discharged because she failed to meet the employer's standards during the probationary period. There was no evidence that she was not working to the best of her abilities and putting forth her best efforts. The inability to meet an employer's standards during the probationary period is not misconduct. See 871 IAC 24.32(5). As such, no disqualification is imposed.

Even if the administrative law judge were to conclude that Ms. Simbro quit her employment, there still would be no basis for disqualification. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Simbro's job was changed from that of kitchen prep to dishwasher. The administrative law judge views the two positions as being substantially different, one unskilled and one semi-skilled. The change would also appear to be a demotion, at least in status. For the above reasons, the change would constitute a drastic modification in the type of work and, therefore, a substantial change in the terms and conditions of employment. As such, it provided good cause attributable to the employer for quitting. See 871 IAC 24.26(1).

After considering all of the evidence, the administrative law judge concludes that Ms. Simbro was separated from SDH for no disqualifying reason. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 4, 2008, reference 02, is hereby affirmed as to result. Ms. Simbro was separated from SDH for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs