

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARNITA R CLARK
Claimant

APPEAL NO: 12A-UI-03315-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/29/12
Claimant: Respondent (1/R)

Iowa Code § 96.19(38) – Partially Unemployed
Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 21, 2012 determination (reference 03) that held the claimant eligible to receive benefits because she was partially unemployed. The claimant participated in the hearing. Jackie Nolan represented the employer. Nicole Thurston testified on the employer's behalf.

In addition to the issues of whether the claimant was available for work, still working the same hours and was eligible to receive partial benefits, the parties verified that the claimant no longer worked for the employer. Both parties agreed the employment separation should also be addressed in this decision and waived their right to advance notice of this issue. Although the parties indicated this issue had not yet been addressed, this separation issue was addressed in reference 04 that was issued on April 9, 2012.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits as of January 29, 2012, because she was working reduced hours during the employer's slow season and remains qualified to receive benefits after her employment ended on February 17, 2012. An issue of whether the claimant has been overpaid for failing to report her wages since she began working for the employer is Remanded to the Claims Section to investigate and determine.

ISSUE:

In late January 2012, when the claimant worked for the employer, was she partially unemployed?

Did the employer discharge the claimant on February 17, 2012, for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in early June 2011. She worked as a part-time housekeeper. The claimant was scheduled an average of 15 to 20 hours a week in January and February 2012. The claimant earned \$8.10 an hour. January and February are part of the employer's slow season and the claimant was not working as many hours as she had been working.

The claimant filed weekly claims since she began working for the employer. The claimant did not report any wages when she filed her weekly claims.

The claimant had work restrictions that the employer tried to accommodate. To accommodate the work restrictions, the employer limited the claimant to work to the first floor and did not require her to do deep cleaning that required her to lift furniture.

On February 14, the claimant did not feel well at work and went home early. There were other days the claimant could have worked but did not because of doctor's appointments or because she did not feel well.

After the claimant cleaned rooms assigned to her, if her supervisor found any problems the claimant went back and corrected the problems or cleaned again what was not satisfactory. The employer gave the claimant a warning for unsatisfactory cleaning in October 2011. The employer did not excuse anyone for unsatisfactory work performance, because housekeepers were supposed to check off items as they cleaned each room assigned to them.

On February 13, 2012, the employer talked to the claimant about the way she cleaned rooms. The employer was not satisfied because the claimant was not doing her job satisfactorily. The claimant told the employer she was doing the job to the best of her ability. After the claimant cleaned 15 rooms and worked six hours on February 17, the employer showed her a room that was not cleaned to the employer's standards. One for the rooms assigned to the claimant on February 17 looked as if it had already been cleaned by someone else when she opened the door. The claimant quickly looked over this room, but did not make sure everything in the room was cleaned to the employer's standards. This room had not been cleaned satisfactorily. After showing the claimant a room that was not cleaned satisfactorily on February 17, the employer discharged her.

REASONING AND CONCLUSIONS OF LAW:

When the employer hired the claimant on June 1, 2011, the claimant regularly worked more than 15 to 20 hours a week. The employer's business slowed down during the winter months and the claimant was not working as many hours as she had been when she started. When the business slowed down, the claimant became partially unemployed and is eligible for partial benefits. (Iowa Code § 96.19(38)b).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 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 justifiable business reasons for discharging the claimant. The employer concluded the claimant was not satisfactorily cleaning rooms to the employer's standards. The evidence establishes the claimant had work restrictions. The evidence also shows the claimant used poor judgment when she did not clean a room that she believed had already been cleaned, but was not. The facts do not establish that the claimant intentionally failed to perform her cleaning jobs unsatisfactorily. She worked to the best of her ability. The evidence does not establish that she committed work-connected misconduct. Therefore, her February 17, 2012 employment separation, (reference 04) does not disqualify her from receiving benefits.

When trying to determine if the claimant's hours had been reduced, the administrative record revealed the claimant filed weekly claims for the weeks ending June 4, 2011, through February 18, 2012, and did not report any wages she had earned from the employer. Since the issues at the hearing did not address the claimant's failure to properly report wages she earned from the employer, this issue will be remanded to the Claims Section to determine. If there are weeks the claimant earned less than \$151 between June 1, 2011, and January 28, 2012, or less than \$108 since January 29, 2012, the Claims Section will also determine if the claimant was available to work the majority of that week or if she was ill and unable to work as scheduled.

DECISION:

The representative's March 21, 2012 determination (reference 03) and the April 9, 2012 determination (reference 04) are both affirmed. For any week the claimant earned less than \$108 in gross wages since January 29, 2012, she is potentially eligible to receive partial benefits. The claimant is qualified to receive benefits based on her February 17, 2012, employment separation because the employer discharged her for reasons that do not constitute work-connected misconduct. If the claimant receives benefits during her benefit year, the employer's account is subject to charge.

An issue of whether the claimant properly reported wages that she earned from the employer from June 1, 2011, through February 18, 2012, is **Remanded** to the Claims Section to determine. Since the claimant had medical issues and doctor's appointments, the Claims Section will determine, if necessary, whether the claimant was able to and available to work for each week she filed a claim for benefits and is potentially eligible to receive partial benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw