

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CODY E CARVAJAL**  
Claimant

**KINSETH HOTEL CORPORATION**  
Employer

**APPEAL NO. 22A-UI-07942-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/20/22  
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

On March 28, 2022, the employer filed a timely appeal from the March 16, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 21, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on May 11, 2022. Claimant Cody Carvajal participated. Jennifer Groenwold of Equifax represented the employer and presented additional testimony through Suzy Ritter and John Myers. Exhibits 1 through 6 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Cody Carvajal (claimant) was employed by Kinseth Hotel Corporation as the full-time Housekeeping Manager at the Residence Inn in Ankeny from August 2021 until February 21, 2022, when Suzy Ritter, General Manager, discharged her from the employment. John Myers, Assistant General Manager, was the claimant's immediate supervisor. The claimant was an hourly employee. The claimant's work days varied weekly. The claimant's Monday through Friday start time was 8:00 a.m. The claimant's Sunday start time was 9:00 a.m. The claimant supervised other housekeeping staff. The claimant understood she was expected to work until the day's work was done and that she was expected to add shifts to her work schedule as needed to meet business needs.

The claimant's Housekeeping Manager duties included getting subordinates set up for the day's work with required supplies and ensuring throughout the shift that housekeeping staff continued

to have needed supplies. The claimant was expected to inspect cleaned rooms and to document in the employer's computer system that the cleaned rooms were ready for guest occupancy. The employer's protocol called for the claimant to use the phone in the cleaned guest room to document the inspection. This system was intended to ensure the claimant actually entered the room to complete the inspection. Another housekeeper was designated the assistant housekeeping manager and was authorized to inspect rooms. The claimant was required at the end of the work day to update in the computer system the numbers of rooms cleaned that day and the number of remaining rooms yet to be cleaned. The claimant was expected to personally clean rooms when there were not enough other housekeeping staff to complete the day's housekeeping work. The claimant was expected to determine what items were missing from the guest room. The claimant was also expected to assist with laundry, inventory, and stocking supply closets. On exceptionally busy housekeeping days, Ms. Ritter and/or Mr. Myers would assist with housekeeping.

The conduct that triggered the February 21, 2022 discharge occurred on Saturday, February 19 and Sunday, February 20, 2022. On Thursday, February 17, 2022, Ms. Ritter had notified Ms. Carvajal that she might be needed to work on Saturday, February 19, 2022. At the start of the housekeeping shift on February 19, Mr. Myers realized there were more rooms to clean than expected. Mr. Myers sent a text message to the claimant requesting that the claimant report to the workplace to assist with the housekeeping duties. The claimant called Mr. Myers. The claimant said she was without a vehicle and asked whether someone could come pick her up so she could come and assist with the housekeeping duties. The claimant's significant other had taken to work the vehicle the claimant would otherwise have driven to work. The claimant was without transportation from her home in Des Moines to the workplace in Ankeny. The claimant was responsible for her own transportation. However, the employer had asked the claimant on occasion to pick up other staff members and transport them to the workplace. Mr. Myers elected not to collect the claimant from her home.

The assistant housekeeping manager showed Mr. Myers a text message the claimant sent on the morning of February 19, 2022. The claimant wrote:

Im not coming in Javier has the car at work and I have plans with yalena today john can take his ass and clean 10 rooms and I just woke up

Shit if suzy can come help when I had to clean 19 he can come help clean 10 while you and briget do the rest

John said only 39 and dave is doing linen changes thats 12 each john can help I have plans. Ask suzy if she can find you some help

The claimant asserts she felt free to communicate with the coworker as she did because she and the coworker were friends outside of work. The employer deemed the text message a violation of employer's work rules. At the start of the employment, the employer had the claimant sign to acknowledge electronic access to an employee handbook. The handbook's disciplinary policy included a provision prohibiting "Any deliberate violation of work rules or any deliberate failure/refusal to do the assigned work" and "Use of profane or abusive language toward fellow employees, customers, or others."

The claimant returned to work for her next shift on Sunday, February 20, 2022. Sunday is the employer's busiest housekeeping day, due to the number of guests checking out. Given the high number of rooms that needed to be cleaned on Sundays, it was not uncommon for the housekeeping staff to clean only a portion of the rooms on Sunday and to clean the remaining

rooms on Monday. On February 20, Ms. Ritter spoke with the claimant about getting 20 to 25 rooms done that day and asked the claimant to complete a walkthrough and update Ms. Ritter at the end of the day. The employer expected housekeeping staff to work up to eight hours per shift, if needed. The claimant did not personally clean any rooms that day. Other housekeeping staff cleaned 24 rooms. The claimant only inspected 20 of those rooms. The four rooms the claimant did not inspect were cleaned by the assistant housekeeping manager, and presumably inspected by her. At the end of the day, there were 28 rooms that still needed to be cleaned and, therefore, were unavailable for guests. The claimant allowed the other housekeepers to leave at 3:30 p.m., rather than having them work to 5:00 p.m. The claimant left at 4:00 p.m. The claimant reported the 24 rooms as cleaned, which the employer deemed the minimum acceptable amount.

The employer had issued a warning to the claimant in October 2021 for failure to properly inspect rooms. In that instance the claimant's failure to inspect rooms resulted in three pull-out couch beds not being closed, prompting customer complaints. The employer determined the claimant had documented from the office that she had inspected the rooms when she had not inspected the rooms.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The weight of the evidence in the record establishes the employer had legitimate concerns about the claimant's employment, but establishes a discharge for no disqualifying reason. On

February 20, 2022, the claimant had staff clean the number of rooms the employer had cited As the minimum that needed to be cleaned. The rooms the claimant did not inspect were cleaning by someone with authority to inspect the rooms. The claimant's decision to let staff leave at 3:30 p.m., with the expectation that remaining rooms would be cleaned the next day, was in keeping with the employer's Sunday protocol and did not indicate a willful or wanton disregard of the employer's interests. The claimant's use of mild profanity while venting to the coworker did not rise to the level willful and wanton disregard of the employer's interests. The claimant was absent from an on-call shift due to a lack of transportation, but offered to work if the employer could collect her from home, something the employer had asked the claimant to do for other employees. Given the precedent, the claimant's request was not wholly unreasonable. Though the absence was unexcused, it did not rise to the level of misconduct in connection with the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The March 16, 2022 (reference 01) decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



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James E. Timberland  
Administrative Law Judge

June 30, 2022  
Decision Dated and Mailed

jet/mh