

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI L REIGHARD
Claimant

APPEAL NO. 09A-UI-09875-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORP
Employer

**Original Claim: 05/31/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed an appeal from a representative's decision dated June 29, 2009, reference 01, which held that no disqualification would be imposed regarding Vicki Reighard's separation from employment. After due notice was issued, a hearing was held by telephone on July 27, 2009. Ms. Reighard participated personally and offered additional testimony from Tessany Heckthron. The employer participated by Carl Deeken, General Manager, and was represented by Robin Quon of Employers Unity.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Reighard was employed by Kinseth Hotel Corporation from August 28, 2008 until May 23, 2009. She worked from 25 to 30 hours each week as a housekeeper at the Best Western in Fairfield, Iowa. She was discharged because her off-duty conduct violated the employer's standards.

On September 25, 2008, Ms. Reighard was charged with third degree burglary of an unoccupied motor vehicle. She was given a deferred judgment. The employer did not take any disciplinary action as a result of the arrest. The employer heard at some later point that Ms. Reighard had been banned from a neighboring store due to shoplifting. There were no pending criminal charges for shoplifting and the employer did not take any disciplinary action as a result of the report.

The decision to discharge Ms. Reighard was based on the fact that she was arrested on May 21, 2009 and charged with breaking into a vehicle. She had been consuming alcohol and believed the car she entered belonged to her cousin. The criminal charges were later dismissed. The employer felt her conduct violated its policy that prohibits "any action which would be a violation of a city or county ordinance, state or federal law." Therefore, she was

discharged on May 23, 2009. There had been no allegations that she stole items from hotel guests. Her only warnings were due to job performance, and the last such warning was in December of 2008.

REASONING AND CONCLUSIONS OF LAW:

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). The employer's burden included establishing that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. In the case at hand, the decision to discharge Ms. Reighard was triggered by her arrest on May 21, 2009.

The fact that an individual has been arrested does not, in and of itself, establish an act of misconduct. It is noteworthy that the charges on which the arrest was based were later dropped. Even Ms. Reighard's testimony as to what brought about the arrest is not sufficient to establish an act of misconduct. Due to the effects of drinking alcohol, she entered a vehicle she believed belonged to her cousin. Absent evidence to the contrary, the administrative law judge cannot conclude that she intended to engage in criminal activity. The employer's evidence concerning other acts of criminal activity consisted solely of unsubstantiated hearsay and rumors for which the employer took no disciplinary action.

The administrative law judge appreciates that the employer had an interest in making sure individuals who might enter guest rooms have integrity and be above suspicion. However, the evidence of record failed to establish that Ms. Reighard deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. Conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated June 29, 2009, reference 01, is hereby affirmed. Ms. Reighard was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw