

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERI L DYKES**

Claimant

**APPEAL NO. 07A-UI-01413-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUPER 8 NORTH MOTEL**

Employer

**OC: 01/14/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Super 8 North Motel (employer) appealed a representative's February 7, 2007 decision (reference 01) that concluded Teri L. Dykes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reason. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Patt Kneen, the general manager; Judy Paulson, a desk clerk; Joni Bock; and Katina Montalbano, a housekeeper, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2006. The claimant worked as a part-time housekeeper. The employer ended this employment because the claimant refused to follow her supervisor's instructions or do her work.

The employer decided to give the claimant a second chance and rehired the claimant on October 15, 2006. Again, the claimant worked as a part-time housekeeper. Before Kneen hired the claimant again, the employer emphasized that the claimant had to do her work and follow directions.

On December 1, the employer talked to the claimant about watching television in guest rooms instead of cleaning the room as the employer instructed her to do. The employer warned the claimant that she could not sit and watch television at work. The employer emphasized that the claimant had to clean her rooms pursuant to the employer's procedures.

Kneen was out of the office December 7 through 14, 2006. During Kneen's absence, the claimant was again observed watching television in a guest room instead of cleaning rooms. Co-workers found dirty linen on beds the claimant had not stripped after a guest checked out. The employer also noticed the claimant was not cleaning bathrooms to the employer's standards while Kneen was out of the office. The claimant engaged in a verbal confrontation with a co-worker that disturbed a guest who was trying to sleep.

When Kneen returned to work on December 15, she learned about the above problems. Kneen also learned a guest's computer cord had been damaged by the claimant. The cord appeared as though it became caught in a vacuum cleaner. Since employees are not allowed to move any personal property of a guest, the employer concluded the claimant vacuumed in an area she should not have been near because of the guest's personal property. The claimant also removed hair products from this guest's room and failed to log them in as a lost and found items. Instead of placing these items in the lost and found area, the claimant placed them by a garbage container. Another housekeeper believed the claimant planned to take these hair products home with her.

The employer discharged the claimant on December 17, 2006. The employer discharged the claimant because she repeatedly failed to clean rooms in accordance with the employer's procedures, such as stripping off dirty bed linens; she failed to follow the employer's procedures when a guest left personal items in a room, and she repeatedly watched television instead of cleaning her assigned rooms.

The claimant established a claim for unemployment insurance benefits during the week of January 14, 2007. The claimant filed claims for the weeks ending January 20 and 27, 2007. The claimant received \$129.00 in benefits for each of these weeks.

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

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. 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 claimant knew or should have known her job was in jeopardy in early December when the employer talked to her about continuing problems with her work or not doing her work and her repeated failure to follow the employer's cleaning procedures. Even though Kneen was out-of-town December 7 through 14, other employees continued to monitor the claimant's work performance. During Kneen's absence, the claimant failed to perform her job in accordance with the employer's procedures. The claimant's conduct during Kneen's absence amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the

claimant for reasons constituting work-connected misconduct. As of January 14, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 20 and 27, 2007. The claimant has been overpaid \$258.00 in benefits she received for these weeks.

**DECISION:**

The representative's February 7, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 14, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 20 and 27, 2007. The claimant has been overpaid and must repay a total of \$258.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw