

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARY WILSON
Claimant

APPEAL NO. 12A-UI-14813-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANJOY INC
Employer

**OC: 12/04/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 7, 2012, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 28, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Sharon Atterberg participated in the hearing on behalf of the employer with a witness, Bertha Bradley.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a housekeeper from February 8, 2012, to November 16, 2012. The claimant was informed and understood that under the employer's policy, tips left in rooms were to be brought to the front desk to be given to the housekeeper who cleaned the room before the guest moved into the room or the employee identified by the guest to receive the tip. She had received warnings for unsatisfactory cleaning in June and September.

On November 9, a guest left a tip in an envelope for the front desk clerk. This was one of the last rooms the claimant cleaned. She picked up the envelope and put it in her shirt pocket because her hands were full. She went to the laundry room to put away her cleaning supplies. She then planned to bring the envelope to the front desk, but as the claimant stepped into the laundry room, the front desk clerk approached her and asked about the tip. She gave the tip to the clerk. This was about three minutes after the claimant left the room. The front desk clerk told the claimant's supervisor that the claimant had not turned in the tip and had to be asked for it. The claimant was not warned about this incident.

On November 15, the claimant had picked up a \$2.00 tip from the room she had cleaned. She forgot to turn it in to the front desk at the end of the day because she had a cab waiting to take her home. She was called at home and admitted she had the tip and said she had forgot to turn it in.

On November 16, 2012, the employer discharged the claimant for not turning in tips.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about the tip for the front desk clerk and her forgetting to turn in the tip on November 15.

No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct has been shown.

DECISION:

The unemployment insurance decision dated December 7, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css