

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMANTHA L BROWN**

Claimant

**APPEAL NO. 14A-UI-03586-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**

Employer

**OC: 03/02/14**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated March 24, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 4, 2014, by telephone conference call. The claimant participated personally. Employer participated by Laurance Thompson, general manager, and Cynthia Nightingale. Amanda Knowasell served as a witness on the employer participation issue. The employer was represented by Jackie Nolan.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is engaged in the management of hotels. The claimant was hired on October 25, 2013, as a front desk agent. She was a full-time employee. Her last day of work was February 20, 2014. She was terminated on February 24, 2014. The reason for termination was that she falsified and changed a guest's record.

The incident that led to the claimant's termination occurred over the dates of February 16, 2014, through February 19, 2014. On February 16, 2014, a guest that the claimant knew asked for a room key. The claimant gave her the key. She did not take her credit card information and did not mark the room as occupied. When the maid went to the clean the room the next day they reported to management that the room was being occupied. The manager checked into the matter and found that no charges had been applied to the room for February 16, 2014, even though the guest had occupied the room. The claimant was instructed to put charges on the room. The guest's credit card did not have sufficient credit to pay the charges and the claimant went through the records and deleted the guest's credit card information. The guest's folio shows that the charges for February 16, 2014 had been deleted. (Exhibit 7)

The claimant established an original claim for benefits with an original claim date of March 2, 2014. The claimant was paid benefits from the period for the week ending March 8, 2014, through the week ending April 19, 2014 in the amount of \$220.00 per week. The employer participated in fact finding.

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were decided in this case. The most reasonable inference from the evidence is that the claimant handed out a key to a guest without arranging for payment of the room or marking the room as occupied. She then proceeded to compound her error by making efforts to delete the guest's credit card from the system to ensure that the guest was not charged for the room on February 16, 2014. The claimant testified that she kept trying to "run

the credit card" without success. Why the claimant did not ask for assistance from management when she encountered difficulties is not explained. The administrative law judge concludes that the claimant made a deliberate choice to ignore management's instruction to charge the guest. This is insubordination. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code Section 96.3-7-a, b.

The claimant received benefit but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer is not a base period employer and benefits are not being charged to the employer at this time.

**DECISION:**

The decision of the representative dated March 24, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs