



then went to a back room, out of camera sight, and remained out of sight for several hours when she was supposed to be on duty. During the time the Claimant was out of view a customer arrived at the front desk, waited, saw no employee, and left. After reviewing this video Mr. Linville reviewed the video from June 22. That video revealed that the Claimant spent more than 3 hours away from the desk, outside of the camera view, and once again a customer came and went without being helped. One of these customers had waited at the desk for at least fifteen minutes. The Employer discharged the Claimant for her neglect of her job duties, and violation of dress code.

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

Iowa Code Section 96.5(2)(a) (2014) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

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 (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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Employer's description of the Claimant's activities as a night clerk. We do not find credible the Claimant's assertions that she thought she was permitted to use the hot tub while she was on duty. Further we find incredible the claim that the Claimant thought it was acceptable to away from the desk for such extended periods of time. Such a claim belies common sense, as well as the Employer's description of its policy requiring a front desk clerk to be available for customers. Finally, we do not base our decision on the question of whether the Claimant had been wearing underwear or a bikini. One way or the other this is not the expected attire for a desk clerk. In addition, even disregarding the dress code issue the neglect of duties was a but for cause of the termination and was itself sufficient to be disqualifying misconduct.

**DECISION:**

The administrative law judge's decision dated August 19, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct / quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (policies & warnings) were reviewed they were not considered in today's decision since the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Ashley R. Koopmans

RRA/fnv