

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAY L GREEN

Claimant

APPEAL NO. 08A-UI-06784-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOWARD JOHNSON AIRPORT EXP –
CEDAR RAPIDS**

Employer

**OC: 06/22/08 R: 03
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Howard Johnson Airport Express (Howard Johnson), filed an appeal from a decision dated July 17, 2008, reference 03. The decision allowed benefits to the claimant, Gay Green. After due notice was issued a hearing was held by telephone conference call on August 11, 2008. The claimant participated on her own behalf. The employer participated by Sales Manager Amanda Turner and was represented by Unemployment Services in the person of Lesley Buhler. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Gay Green was employed by Howard Johnson from April 22, 2005 until May 30, 2008 as a full-time housekeeper. On October 11, 2007, April 29 and May 13, 2008, she received several written warnings regarding her attendance and job performance. The job performance issue was regarding her failure to change the sheets in guest rooms. The warnings given to her on May 13, 2008, did notified her that any future failure to perform her job as required would result in discharge as failure to change linen was a health code violation.

On May 30, 2008, Ms. Green was two and one-half hours late to work because she had to take her son to school. This entailed her taking a series of city buses from her home to her son's home to his school. She did call in shortly before her shift was to start and report she would be late. After she did appear Sales Manager Amanda Turner and Head Housekeeper Cathi Clark inspected some of the rooms she had cleaned. These were rooms where the guest had checked out and all the linen needed to be changed. They found the comforters on the beds had been pulled up and straightened, but the sheets had not been changed. This was evidenced by hairs on the sheets, mascara marks on the pillow cases and one bed where the sheets were bunched up in the middle, not even straightened.

The front desk clerk had notified the managers about the amount of dirty linen the claimant had brought down in her cart. He stated there were "a lot of towels" but only about "two rooms" worth of sheets. The claimant was then discharged by Acting General Manager Jennifer Dannels and General Manager in Training Jennifer DePuew.

Gay Green has received unemployment benefits since filing a claim with an effective date of June 22, 2008.

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.

The claimant had been advised her job was in jeopardy as a result of her attendance and poor work performance. In spite of this warning she was late two and one-half hours on May 30, 2008, due to personal transportation problems and then did not do her work as required. Not changing the linen is a health code violation which could have had legal repercussions for the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 17, 2008, reference 03, is reversed. Gay Green is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css