

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMIKA G COLEMAN
Claimant

APPEAL NO. 20R-UI-03978-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/19/20
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Tamika Coleman filed a timely appeal from the February 17, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Coleman was discharged on December 3, 2019 for misconduct in connection with the employment. After due notice was issued, a hearing was held on May 29, 2020. Ms. Coleman participated. Toni McColl of Employers Unity represented the employer and presented testimony through Brandon Andersen. Exhibits 1, 3 through 6, 8, and 10 through 14 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tamika Coleman was employed by Kinseth Hotel Corporation, doing business as Comfort Inn and Suites in Davenport, from December 2018 until December 3, 2019, when the employer discharged her from the employment. On December 1, 2019, Ms. Coleman knowingly and intentionally violated multiple employer policies. Ms. Coleman knowingly and intentionally failed to require a drug dealing "guest" to provide a valid credit card when she checked him in and provided him with use of a hotel room. Ms. Coleman documented that she provided the same person with an unauthorized \$30.00 discounted room rate. The employer had no authorized discount rate that low. Ms. Coleman had provided the room to the man in exchange for an illicit drug. The man had placed the small plastic bag containing the white powder drug in a folded magazine that he then handed to Ms. Coleman at the front desk of the hotel. Ms. Coleman received the folded magazine into her hand and placed the folded magazine in her back pocket.

Brandon Andersen, General Manager, began to learn of the multiple policy violations when the man checked out on December 2, 2020. At that time, Mr. Andersen learned of Ms. Coleman's failure to obtain a valid credit card at the time she provided the man with the room. At that same time, Mr. Andersen also learned of the excessive and unauthorized discount. To make matters

worse for the hotel, the departing man asserted that he had paid cash to Ms. Coleman for the room. Based on that assertion, Mr. Andersen ended up not charging the man for the room, meaning the hotel received no payment for use of the room. Mr. Andersen then reviewed video surveillance that showed Ms. Coleman checking in the man. The surveillance record reflected that the man had presented multiple credits cards, all of which were declined by the card issuer when Ms. Coleman attempted to scan them for payment of "incidentals." The surveillance record showed Ms. Coleman receiving the substance folded in the magazine, pocketing the magazine with the substance folded within, and walking through the workplace with the folded magazine in her pocket.

On December 3, 2020, Mr. Andersen questioned Ms. Coleman about the matter. Mr. Andersen showed Ms. Coleman a portion of the video surveillance record. Ms. Coleman at first dishonestly asserted that she had provided the reduced room rate because the guest only wanted to use the room for an hour or two. Mr. Andersen pointed out that the established policy was to charge the daily rate rather than a partial day rate. Ms. Coleman then dishonestly asserted that the man in question has been entitled to a military discount. Ms. Coleman had documented no military status at the time of check-in. The \$30.00 discounted room charge she documented was lower than the military discount charge. Ms. Coleman acknowledged that the guest had provided her with an illicit drug. However, Ms. Coleman asserted that she thought the drug she received would be marijuana, but that it turned out to be white powder. Ms. Coleman told Mr. Andersen that she had taken the white powder drug home and had thrown it away at home. The employer's policies prohibited possession of illegal drugs on the employer's premises. The employer had reviewed the policy with Ms. Coleman at the start of the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes a December 3, 2019 discharge for misconduct in connection with the employment. The hearing record readily reflects that Ms. Coleman's testimony was brazenly dishonest from start to finish. Ms. Coleman repeatedly avoided providing responsive answers to simple, straightforward questions and instead uttered one meandering, obfuscating fabrication after another. There were no such issues with the employer's testimony. The evidence in the record establishes that Ms. Coleman knowingly and intentionally violated the employer's policy, willfully and wantonly disregarded the employer's interests, and broke the law by possessing a controlled substance on the employer's premises. Ms. Coleman knowingly and intentionally violated the employer's policy and willfully and wantonly disregarded the employer's interests by exchanging overnight accommodations in the

employer's hotel for the controlled substance at issue. Ms. Coleman knowingly and intentionally violated the employer's policy and willfully and wantonly disregarded the employer's interests by extending an unauthorized discount and by failing to ensure the lodger in question had a valid credit card scanned into the employer's computer system at the time he checked in to ensure the employer received payment for accommodations. Ms. Coleman is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Coleman must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The February 17, 2020, reference 01, decision is affirmed. The claimant was discharged on December 3, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

June 17, 2020
Decision Dated and Mailed

jet/sam