

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER R BAUMAN
Claimant

APPEAL NO. 07A-UI-10554-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORP
Employer

**OC: 09/23/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 11, 2007, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Beverly Lamb participated in the hearing on behalf of the employer with a witness, Dennis Schlein. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as the banquet manager for the employer from August 29, 2006, to September 26, 2007. The claimant received a verbal warning on September 11, 2007, for losing her business keys. She actually had her wallet and the keys stolen from her person, and the missing keys were not due to any deliberate or negligent conduct by the claimant. She also received a written warning on September 11, 2007, for overlooking some service details regarding a wedding she was responsible for.

The employer discharged the claimant on September 26, 2007, for (1) not submitting recap sheets for events on September 19 and 23 immediately for posting; (2) not having liquor inventory sheets in her manager's inbox on September 21; (3) not having department schedules posted on September 14; and (4) failing to follow through on special instructions of a bride regarding belongings she had left on September 15.

The claimant had determined when there were events scheduled on days on which she was not scheduled to work, it was better to post the recap sheets on her next day of work rather than post them before the event; because, despite her instructions, they would end up being entered in the system early. She followed this practice on September 19 and 23.

The claimant had completed the liquor inventory for September 21 but forgot to print a copy off for her manager. If the claimant had been asked for the inventory, it was available to be printed.

The claimant had posted the schedule in a timely fashion on September 14, but she had to take it down after two employees requested that the schedule be changed. She posted the schedule again with the changes.

The bride had requested that she be allowed to leave linens and some other items after a reception. The claimant had followed this instruction and left a note for the maintenance staff as to what to do with the items. The maintenance staff mistakenly took the linens to the laundry instead of setting them aside in a room with the other items.

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.

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 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 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 11, 2007, reference 03, 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/kjw