

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTWANNE M BRADY**  
Claimant

**APPEAL NO. 13A-UI-03418-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARRIOTT HOTEL SERVICES INC**  
Employer

**OC: 02/26/12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the representative's decision dated March 15, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. The claimant participated personally. The employer advised the Appeals Bureau, in writing, that it would not be participating. The record consists of the testimony of Antwanne Brady.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a hotel located in downtown Des Moines, Iowa. The claimant was hired in June 2012 to work as the full-time catering supervisor. The claimant's last day of work was February 6, 2013. He was terminated on February 6, 2013.

The reason that the claimant was terminated was that the employer believed he failed to set up one of the rooms for a banquet. The claimant had been told by his supervisor that the day crew would set up this room. The claimant did all of the other rooms. When the claimant returned to work the next day, he was terminated because the room was not set up.

## 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. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof in this case.

The claimant is eligible for unemployment insurance benefits. There is no evidence of misconduct in this case. The most reasonable inference from the evidence is that there was a misunderstanding between the claimant and his supervisor on who was going to set up a banquet room. The claimant credibly testified that he was told by his supervisor that the day crew would set up the banquet room and so he did not do it. A misunderstanding of this nature is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated March 15, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs