

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY KIEFFER
Claimant

APPEAL NO. 07A-UI-00981-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARK PROFESSIONAL SERVICES INC
Employer

**OC: 12/24/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jody Kieffer (claimant) appealed an unemployment insurance decision dated January 17, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Park Professional Services, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 13, 2007. The claimant participated in the hearing. The employer participated through Ken Haugen, General Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time housekeeper and housekeeping supervisor for this hotel from September 8, 2005 through December 17, 2006, when she was discharged for theft. The employer uses key cards to unlock rooms and the key cards are assigned to individual employees so the employer can determine who is entering which room. Only a supervisor has a master key card and even that is only assigned to one individual. On December 15, 2006, the claimant was working as the housekeeping supervisor who was responsible for checking rooms and ensuring they were ready for the guests. If a customer had a "Do Not Disturb" sign on his or her door, no one was allowed to enter the room unless it was to check on the wellness of the guest if there was a concern. The employer had several long term guests who happened to be temporarily working in the local vicinity. The guest in Room 350 was a long-term guest and typically had a "Do Not Disturb" sign on her door. She regularly ate breakfast at the hotel and was gone for the entire day. On December 15, 2006, at approximately 10:00 a.m., another employee witnessed the claimant entering Room 350.

The co-employee did not report this to the employer until December 17, 2006. At this time, the employer went into the computer system and confirmed the claimant was the only individual who had entered Room 350 at approximately 10:00 a.m. on December 15, 2006. The employer then casually questioned the guest as to whether or not she had noticed anything different in her hotel room on December 15, 2006. This particular guest was rather shy and admitted to the employer that she had several items missing from her room. She reported that cash, jewelry and perfume was missing and her personal items had been rifled through. The guest added that it had been ongoing since she had arrived there, which is why she had the "Do Not Disturb" sign on her door. The employer discharged the claimant at that time without going into explanation because the employer did not want any problems from the claimant. However, the claimant became angry anyway and threatened the employer. The employer was so concerned over the claimant's threats that the police were called and a report was completed. The employer gave the police the claimant's last-known address but she had since moved and the police never contacted her.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 claimant was discharged for theft. She denies any wrongdoing and claims that the master key was always given out to the cleaning staff so there is no way to determine who entered that room. However, if a supervisor gave out a master key to another employee, it would have resulted in a disciplinary warning. The claimant was seen entering Room 350 and the computer records verified the claimant was assigned the key that had been used to enter the room. The employer has met its burden by a preponderance of the evidence. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 17, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw