

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY L SCHAFER
Claimant

APPEAL NO. 10A-UI-03986-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND INNS OF AMERICAN
Employer

**Original Claim: 01/24/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kimberly Schafer, filed an appeal from a decision dated March 5, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 29, 2010. The claimant participated on her own behalf, with witness Frank Belland, and was represented by Bryan Witherwax. The employer, Heartland Inn, participated by Director of Operations Barb Cullinan, General Manager Debbie Bullion, Personnel Director Jean Orwig, and Night Auditor Carl Forgy.

ISSUE:

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

FINDINGS OF FACT:

Kimberly Schafer was employed by Heartland Inn from December 18, 2008 until January 20, 2010 as a full-time director of sales. On January 19, 2010, Night Auditor Carl Forgy went to General Manager Debbie Bullion about an incident that had occurred on New Year's Eve. He had been working and Ms. Schafer came in after a party to do some work. He asserted she was somewhat intoxicated and became aggressive, loud, and abusive to him and guests. He alleged she had trapped him behind the front desk and would not let him leave so he crawled over the desk, although he did not leave the hotel.

Mr. Forgy asserted she had stayed until around 4:00 a.m., when the breakfast person showed up, and had been agitated and interfered with his work. He did not report this to the employer for over two weeks because he had considered Ms. Schafer to be a friend and did not want to jeopardize her job. But, he finally reported it because he felt she had been harassing him by calling him at work to demand why he was not talking to her or returning her calls and texts.

The claimant acknowledged she had gone to the hotel to do some work after a New Year's Eve celebration but she had had only two drinks in a four-hour period. She denied being intoxicated,

aggressive, or discourteous to Mr. Forgy and any guests. She alleged Mr. Forgy had been in a bad mood and she was trying to calm him down.

The employer did not interview Ms. Schafer but made the decision to discharge her based on Mr. Forgy's report. There was some mention of a guest who had complained directly to the owner, but the employer witnesses at the hearing did not specify what that complaint may have been.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present, case the employer had only one witness to the actual event, as did the claimant. The employer allegedly had another witness to the events of New Years Eve but did not provide testimony or a written statement from that person. It is also noted the employer did not bother to interview Ms. Schafer about the allegation before discharging her.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge does not find the claimant's testimony to be any more or less credible than that of the

employer's witness. But, the employer must meet its burden of proof by a preponderance of the evidence, and it has not carried its burden of proof in this matter. The employer has not successfully rebutted the claimant's denial of wrongdoing and misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of March 5, 2010, reference 02, is reversed. Kimberly Schafer is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw