

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE H MERRITT

Claimant

APPEAL NO. 12A-UI-15144-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHANDA INC

FAIRFIELD INN – CEDAR RAPIDS

Employer

OC: 11/25/12

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rose Merritt, filed an appeal from a decision dated December 17, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 29, 2013. The claimant participated on her own behalf. The employer, Fairfield Inn, participated by General Manager Cheryl Ducharme and Head Housekeeper Julie Kane.

ISSUE:

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

FINDINGS OF FACT:

Rose Merritt was employed by Fairfield Inn from September 9, 2011 until November 30, 2012 as a part-time housekeeper. On November 19, 2012, General Manager Cheryl Ducharme heard Ms. Merritt talking to another employee demanding money for working the night shift. The claimant believed tips had been left by a work crew which were to have been split among the housekeepers who worked a special shift to accommodate this crew.

Ms. Ducharme intervened in the conversation and the claimant continued to demand the money. The general manager explained no tips had been left by this work crew but the claimant was not convinced. The argument became heated and finally the general manager told the claimant to leave. Ms. Merritt refused to leave and attempted to take her housekeeping cart out of the room. Ms. Ducharme had to physically stop her and again told her to punch out and go home. This order was given three times and the claimant did not leave until the general manager told the front desk to call the police.

The next day the claimant returned to work and was discharged by Ms. Ducharme for insubordination.

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 claimant was discharged for insubordination. She refused the instructions from the general manager to go home. The attempt to defuse the situation and give a "cool down" period for both people was not unreasonable, but Ms. Merritt defied the order and had to be physically stopped from taking her cart and going off to work.

The claimant admitted she had defied the general manager's order to leave because she did not think she had to obey. This is incorrect. The employer has the right to expect an employee to obey valid instructions given by a supervisor. The claimant's defiance is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of December 17, 2012, reference 01, is affirmed. Rose Merritt is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css