

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN P WATTERS
Claimant

APPEAL NO. 08A-UI-04784-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 03/30/08 R: 12
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Kinseth Hotel Corporation (Kinseth) filed an appeal from a representative's decision dated May 7, 2008, reference 01, which held that no disqualification would be imposed regarding Stephen Watters' separation from employment. After due notice was issued, a hearing was held by telephone on June 3, 2008. The employer participated by George Herbst, Food and Beverage Director, and was represented by Sandy Fitch of TALX Corporation. Mr. Watters did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Watters was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Watters was employed by Kinseth from August 31, 2005 until April 1, 2008. He was initially employed in Iowa but transferred to Peoria, Illinois, on July 11, 2007. He was last employed full time as service manager. He was discharged for repeated violations of the employer's standards.

Mr. Watters received a verbal warning on or about February 21, 2008 after he allowed a "new hire" packet to be taken home. As service manager, he was required to perform a walk-through of the kitchen at the end of the shift to make sure everything was in order. On March 14, he left the kitchen in an unsanitary state with health code violations. As a result, he received a verbal warning. On March 18, it was discovered that he left Bactine on the food line and he received an additional verbal warning. When questioned as to why he left the kitchen in the condition he did on March 14 and March 18, Mr. Watters indicated he missed the problem areas.

Mr. Watters was responsible for making sure the front doors to the restaurant were locked after hours. On March 14, he failed to lock the doors and guests entered the restaurant after hours. He received another verbal warning. Mr. Watters received a verbal warning on March 24 after it

was discovered that he was using the internet for personal matters during work time. Employees are limited to using the internet during breaks.

The decision to discharge Mr. Watters was due to two incidents on March 28. He was observed getting his hair cut at approximately 3:00 p.m. when his shift had just started at 2:00 p.m. The employer estimated he was gone from 30 to 40 minutes getting his hair cut. At the end of his shift on March 28, Mr. Watters failed to lock the office door and set the alarm. The employer's safe was located in the office but there was no loss as a result of the failure to lock and secure the office. He was notified of his discharge on April 1, 2008.

Mr. Watters filed a claim for job insurance benefits effective March 20, 2008. He has received a total of \$1,522.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer cited a number of incidents that contributed to the decision to discharge Mr. Watters. The fact that he allowed a "new hire" packet to leave the facility constituted simple negligence. He was also negligent in failing to make sure the kitchen was left in an orderly fashion on March 14. Since he was warned about the condition of the kitchen on March 14, the fact that he again left it in unsatisfactory condition on March 18 suggests that he deliberately failed to perform the walk-through that would have disclosed problem areas.

Mr. Watters was negligent in failing to lock the restaurant doors on March 14. On March 28, he failed to lock the office door and set the alarm. Given the warning he received on March 14, he knew or should have known to be more attentive to locking doors as required. His actions had the potential of subjecting the employer to financial loss if a stranger had gained access to the office.

As a manager, it was up to Mr. Watters to set the standards for those working under him. His conduct in using the internet for personal business was contrary to the employer's policies and sent the wrong message to other employees. On March 28, he had his hair cut while on the clock. His actions constituted theft, as it resulted in the employer paying him for time he did not actually perform services for the employer.

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Mr. Watters' combination of negligent and intentional conduct constituted a substantial disregard of the standards the employer had the right to expect from a manager. Mr. Watters did not always make the appropriate changes once problems were brought to this attention. For the reasons stated herein, benefits are denied.

Mr. Watters has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 7, 2008, reference 01, is hereby reversed. Mr. Watters was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Watters has been overpaid \$1,522.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw