

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A BUTCHER
Claimant

APPEAL NO: 08A-UI-10280-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KINSETH HOTEL CORPORATION
BEST WEST HOLIDAY LODGE CLEAR LAKE**
Employer

**OC: 09/28/08 R: 02
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Kinseth Hotel Corporation / Best West Holiday Lodge Clear Lake (employer) appealed a representative's October 24, 2008 decision (reference 02) that concluded Mary A. Butcher (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on November 19, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-10279-DT. The claimant participated in the hearing. Diane Elkins of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Lori Falt and Janice Klive. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 2007. She worked full time as a housekeeper at the employer's Clear Lake, Iowa hotel. Her last day of work was October 3, 2008. The employer discharged her on that date. The stated reason for the discharge was continued deficiencies in her work quality after prior warning.

The claimant had been given warnings regarding unacceptable cleaning omissions on June 2, June 18, and June 27; on September 19 she was given a final warning and 60-day probation for continued omissions in adequate cleaning.

On October 3 the claimant cleaned 20 rooms between 7:32 a.m. and 1:13 p.m. After the claimant finished and left, Ms. Klive, the housekeeping manager, inspected the rooms at approximately 2:30 p.m. Eight of the rooms, occupied by construction workers who had left the premises by about 7:00 a.m. and who would not return until the evening, had various cleaning

deficiencies including several with hair on the floor, in the sink, or in the tub, one with a dirty ash tray and an open window, one with no toilet paper, and one with urine on the toilet and floor. The claimant had left a can of air freshener in one room, and one room had a dirty coffee pot and missing coffee cup and drinking glass. As a result of these further deficiencies after the final warning on September 19, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective September 28, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$696.00.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's continued deficiencies in proper cleaning after prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's October 24, 2008 decision (reference 02) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 3, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs