

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KELCEY MORGAN

Claimant

and

AM HOTELS INC

Employer

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HEARING NUMBER: 16B-UI-03754

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Kelcey Morgan, worked for AM Hotels, Inc. from August 28, 2015 through March 4, 2016 as a full-time night auditor. (15:19-16:00; 24:34-24:53) The Employer has a policy that prohibits employees from purchasing rooms at a discounted rate unless they have prior authorization. (11:10-11:51; Exhibit C) Another policy prohibits employees from being on the premises for any unrelated motel business reason after conclusion of their shift. (Exhibit C) Violation of these policies could result in termination. The Claimant received this policy and signed in acknowledgement of receipt on September 28, 2015. (12:05-13:45; 19:30-19:59; Exhibit D)

On March 3, 2016, the desk clerk (Melissa Perez) reported the Claimant leaving a hotel room (#149) with a non-staff female at 9:30 a.m., and exiting out the side door, which is against company policy. (16:08-16:31; 17:36-18:05; 19:11-19:21; Exhibit B) This was not the first time the desk clerk observed the Claimant exiting a room with an unknown female outside of his shift. (21:25-21:45) When questioned, Mr. Morgan initially denied the incident. (16:37; 17:19-17:28; 21:05-21:11; 26:36-27:00; 27:50-28:03) He later

admitted it after the Employer reviewed the surveillance video, which confirmed the desk clerk's verbal and written report, and confronted the Claimant with the information. (16:42-17:02)

Page 2
16B-UI-03574

The Employer terminated the Claimant for violating company policy by having a non-staff female on the property and using a room without prior authorization. (18:19-19:03)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The record clearly establishes that the Employer has several policies for

which the Claimant signed towards the start of his employment. Thus, we can reasonably infer that the Claimant knew what was expected of him regarding the unauthorized use of hotel rooms and being on the premises outside his work shift for a nonbusiness-related reason. The Employer provided ample evidence to contradict the Claimant's testimony in which he, initially, denied the matter. The fact that he later admitted to the matter only after the Employer told him of the video further diminished the Employer's trust in him. Given the Claimant's position as the night auditor, it was incumbent upon him to comply with the Employer's policies. Based on this record, we conclude that the Employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated April 18, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv