

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KRISTA L WELSCH
PO BOX 136
RUDD IA 50471-0136**

**LIBERTY SQUARE LLC
LIBERTY SQUARE CARE CENTER
111 S BOULDER
NORA SPRINGS IA 50458**

**Appeal Number: 06A-UI-01344-HT
OC: 01/15/06 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Krista Welsch, filed an appeal from a decision dated January 31, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 21, 2006. The claimant participated on her own behalf and with a witness, Donna Lunsford. The employer, Liberty Square, participated by Business Office Manager Darcy Piper .

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Krista Welsch was employed by Liberty Square from

October 13, 2003 until January 11, 2006. At the time of separation she was the full-time dietary supervisor.

The Iowa Department of Inspections and Appeals came to the facility on December 19, 2005, and found numerous sanitary violations in the kitchen. Ms. Welsch had only been the supervisor since August 2005 and was dealing with a staff shortage and the cleanliness problems from the previous supervisor. The state inspector said the problems had to be cured and the facility was going to be cited.

Administrator Shanna Litterer told Ms. Welsch the problems had to be addressed and she made an attempt to do so while hiring and training new staff. She was issued a written warning on December 28, 2005, as a result of the state inspection nine days earlier, which set out the specific areas to be cured. On January 11, 2006, the claimant was discharged because the employer did not feel she had made sufficient progress on the cleaning.

The claimant maintained the problems cited in the discharge were merely temporary, boxes on the floor because the food delivery had just arrived and the inventory was being stocked. The "sticky floor" was because someone had spilled orange juice while fixing a meal and had temporarily cleaned it with a paper towel and had not wet mopped it. The dirty glasses were ones not customarily used for residents and were a low priority compared to the glasses used every day. Ms. Welsch was not using a hair net because hers had just been blown off by the dish washing machine and she had not yet replaced it when the administrator walked through the kitchen.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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's witness had no first-hand, eyewitness information about any of the events which led to the claimant's discharge. The claimant asserted she had made a good-faith effort to cure the problems but was making only limited progress due to staffing problems. In addition, the administrative law judge notes the problems cited by the state inspector did not occur overnight and no explanation was given as to why the employer allowed the situation to deteriorate to this extent and why it took a state inspector to bring the problems to its attention.

The claimant has offered reasonable explanation for all the problems cited in the discharge notice and the employer was not able to successfully rebut any of it. The administrative law judge must conclude the employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of January 31, 2006, reference 01, is reversed. Krista Welsch is qualified for benefits provided she is otherwise eligible.

bgh/s