

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNAN L BAKER**  
Claimant

**APPEAL NO: 10A-UI-01949-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARRIOTT HOTEL SERVICES INC**  
Employer

**OC: 01/03/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 27, 2010, reference 01, that held the claimant was not discharged for misconduct on December 29, 2009, and benefits are allowed. A telephone hearing was held on March 16, 2010. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 12, 2007, and last worked for the employer as a full-time housekeeper on December 29, 2009. The claimant received a written warning for absenteeism on September 21, 2009. The claimant was given a second chance letter which gives her one more opportunity to correct her attendance issues. The claimant and a co-worker were involved in an incident at work on December 30. The claimant and the co-worker had an issue with a work assignment and there was an exchange of words between that involved the word “bitch”.

The claimant reported the incident to HR, and it conducted an investigation. The claimant was discharged on December 31 for unprofessional conduct by incurring a fourth warning. The claimant did not incur any absence from employment after the September 21st warning.

The employer representative was not available when called for the hearing.

## 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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 31, 2009.

The employer offered a number of documents, but it did not offer the disciplinary policy to show that four warnings for any workplace violation could result in discharge. The claimant received a last chance warning for absenteeism in September as it is stated on the warning, and understood a further attendance issue could lead to termination. However, the claimant was discharged for a recent incident unrelated to any attendance issue. While there was an unpleasant exchange of words between co-workers, it does not rise to the level of job disqualifying misconduct.

**DECISION:**

The department decision dated January 27, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on December 31, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs