

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY S KRAUSE
Claimant

APPEAL 20A-UI-13898-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE LANDS OF AMERICA INC
Employer

OC: 07/26/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding interview

STATEMENT OF THE CASE:

Adventure Lands of America, Inc., the employer/appellant, filed an appeal from the October 29, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2021. Harlan Wilson participated and testified for the employer. Mr. Krause did not participate. Employer's Exhibits 1 through 7 were admitted into evidence.

ISSUE:

Was Mr. Krause's separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Krause began working for the employer on February 12, 2018. He worked as a full-time maintenance supervisor. His last day of work was July 29, 2020.

On July 28, a customer in room 114 reported to the employer that \$200 went missing from their hotel room on July 27 and \$200 went missing from their hotel room on July 28. The customer reported that they had the Do-Not-Disturb sign on their hotel room door. The customer was part of a group that had rented rooms 114, 116 and 118. The customer reported that none of the members of their group were in any of the rooms from 9:30 a.m - 4:00 p.m. on July 27 and 28.

The employer investigated and found that on July 27 the electronic key assigned to Mr. Krause was used to enter the room 114 at around 12:30 p.m. and again around 3:40 p.m. The investigation further found that on July 28 another electronic key – QA#10 key – was used to enter room 114 at 1:06 p.m.

Mr. Wilson spoke with Mr. Krause on July 28 after the customer's complaint and Mr. Krause said he didn't remember going into room 114. Mr. Krause later stated that the front desk staff sent him to room 160 but he mistakenly went into room 116. Nathaniel James, hotel operations manager, saw Mr. Krause come out of room 116.

On July 29, Mr. Krause met with Joseph Palensky, assistant general manager and Mr. Wilson. Mr. Krause stated that he did not know why his key was used to enter room 114. Mr. Palensky informed Mr. Krause that his employment was terminated for suspected theft.

Mr. Wilson testified at the hearing that the only thing the employer could prove with evidence was that Mr. Krause's key was used to open room 114 on July 27 and that the customer complained of money missing from their room on July 27 and 28.

Mr. Krause received state unemployment benefits in this matter in the amount of \$4,012.00. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Krause was discharged from employment for no disqualifying reason.

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 in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, Mr. Krause was accused of stealing money from room 114. The complaint was filed on July 28 alleged that money went missing on July 27 and again on July 28. The employer provided evidence that Mr. Krause's key was used on room 114 and on July 27 but provided no evidence that his key was used on room 114 on July 28. Given that the lapse in time from when the money was alleged to have been stolen on July 27 and the complaint on July 28 and the lack of evidence that Mr. Krause entered room 114 on July 28, the employer has not provided sufficient evidence of deliberate conduct in violation of company policy, procedure, or prior warning. Benefits are allowed.

Iowa Code §96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Because Mr. Krause's separation was not disqualifying, he was not overpaid benefits.

DECISION:

The October 29, 2020, (reference 01) unemployment insurance decision is affirmed. Mr. Krause was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 26, 2021
Decision Dated and Mailed

dz/scn