

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA R WALLINGFORD
Claimant

APPEAL NO. 09A-UI-08253-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 04/26/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 28, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 24, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Richard Kleinsmith participated in the hearing on behalf of the employer with witnesses, Brenda Cook and Carl Deeken. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part time for the employer as a housekeeper from October 4, 2006, to March 10, 2009. She was informed and understood that under the employer's work rules, employees could be disciplined for any action that would be a violation of a city or county ordinance, state or federal law. Her supervisor had counseled her about taking things from guests' rooms after the supervisor observed her taking packages of coffee.

On March 6, 2009, the claimant shoplifted items from a nearby Hy-Vee store before reporting to work. She was wearing her hotel uniform when store personnel caught her stealing.

On March 10, 2009, the claimant pled guilty to theft in the fifth degree because of the shoplifting incident. The employer discharged her for disobeying the rule prohibiting employees from violating the law.

The claimant filed for and received a total of \$1,112.00 in unemployment insurance benefits for the weeks between April 26 and June 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The employer has proven a connection between the claimant's conduct and her work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires a claimant who receives benefits and is later determined to be ineligible for benefits to repay the 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated May 28, 2009, reference 01, is reversed and remanded. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css