

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN E WAUGH
Claimant

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

APPEAL 15A-UI-10783-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 15, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 9, 2015. Claimant participated. Employer participated through human resources specialist, Megan Sease. Tracey Casey registered for the hearing on behalf of the employer, but did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a front desk agent lead from January 26, 2012, and was separated from employment on August 27, 2015, when he was discharged.

Claimant made a duplicate room key and gave it to a male from Georgia. The male was not a registered occupant of the room the key was made for. The registered occupant of the room the key was made for was a female, also from Georgia. The female occupant knew the male. The female occupant did not want the male to have a key to her room. The female occupant made a complaint to the employer. Claimant was discharged for making a duplicate key and giving it to the male.

Claimant had no prior warnings for making duplicate keys. The employer does not have a written policy on the distribution of keys. Employees are given training about handing out keys. Employees are to check ids before issuing room keys. It is common practice to check ids when checking a person into a room. If a customer does not have an id, then the employee can utilize security to go with the person to get their id. Claimant received this training. It is a safety concern if this protocol is not followed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

People that work at the front desk of hotels and provide room keys reasonably have a high standard of care required in the performance of their job duties to ensure the safety and privacy of their guests. When someone rents a room at a hotel, they have a reasonable expectation of not only privacy, but that only people the occupant gives permission to will have access to their

room. There is an inherent trust given that room keys will not be given to anyone unless they have been authorized. Claimant violated that trust. Claimant made an assumption that the male could have a key. Claimant did not contact the registered occupant to determine if the male was authorized, instead, claimant just made a key for the male and gave it to him. The employer has a duty to protect the safety of its occupants. It does not matter if the female occupant knew the male or even if they were friends. Clearly, she did not want the male to have a key to her room. This was evident by her complaint to the employer after it was discovered that the male had a key. Although there were no prior warnings for similar conduct, this was still substantial misconduct that had the potential to result in serious harm to the guest and the employer. Claimant's argument that there was no written policy governing the issuing of keys is not persuasive. Ms. Sease testified that the employees receive training on issuing keys. Furthermore, it is common sense not to issue room keys to nonregistered occupants of a room just because they asked for a room key; a room key should not be given without receiving authorization from the registered occupant.

The employer has presented substantial and credible evidence that claimant provided a duplicate key to a male that was not registered to that room without authorization from the registered occupant of the room. Claimant's conduct was contrary to the best interests of the employer and the safety of its guests. This is misconduct without prior warning or specific policy violation.

DECISION:

The September 15, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css