

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANNON JEFFERY
Claimant

LVSM HOLDINGS
Employer

APPEAL 20A-UI-00061-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/13/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 20, 2019 (reference 02) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 24, 2020. The claimant, Shannon Jeffery, participated personally. The employer, LVSM Holdings, did not participate. Employer's witness Brian Scheffert registered a telephone number to be contacted at for the hearing but did not answer at the telephone number provided when the administrative law judge attempted to reach him to participate in the hearing.

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 supervisor at the employer's hotel. Claimant's employment began in April or May of 2019 and ended on November 20, 2019. Claimant's direct supervisor was Brian Scheffert. Her job duties consisted of customer service, making reservations, answering the telephone, tending bar, checking the pool, and making coffee.

Mr. Scheffert was out of town for a period of time and the claimant was responsible for operating the hotel in his absence. She had not been properly trained on all billing procedures. While Mr. Scheffert was gone, a guest wanted to set up automatic billing for his long term stay at the hotel. Claimant did not know how to set up long term billing and asked if the customer could wait until Mr. Scheffert returned. The customer complained to Mr. Scheffert about the claimant not being able to assist him.

Another guest complained about the claimant being unable to assist him when his bill was incorrect. The bill had already been paid and closed when the customer contacted the claimant. Because the bill was already paid and closed, the claimant was never trained how to remove charges from an old bill. She asked if the customer could wait until Mr. Scheffert returned to

assist him. The customer complained that the claimant could not assist him and was talking over him during their telephone conversation. Claimant was not rude, threatening, or disrespectful to any of the customers she served while Mr. Scheffert was out of town. Claimant was discharged when Mr. Scheffert returned for having customers complain about her services. Claimant had received no previous discipline during the course of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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).

Claimant credibly testified that she provided appropriate customer service to the guests at the hotel. Claimant completed her job tasks to the best of her ability. There is no evidence that the claimant engaged in any deliberate acts or omissions which constitute a material breach of her job duties. As such, no final act of job-related misconduct is established and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 20, 2019 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn