

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BESSIE L HAYES**

Claimant

**APPEAL NO. 08A-UI-10307-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NYSIVE HOSPITALITY INC  
BEST WESTERN CITY CENTRE**  
Employer

**OC: 10/05/08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Best Western City Centre (employer) appealed a representative's October 28, 2008 decision (reference 01) that concluded Bessie Hayes (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 19, 2008. The claimant participated personally. The employer participated by Rikesh Patel, Operations Manager, and Samantha Gage, General Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 7, 2000, as a full-time head house keeper. The employer felt the claimant knew her job and promised her a raise for five years. She never received the raise. The employer talked to the claimant about reprimanding her subordinates more often but did not issue her any warnings. The claimant always followed the employer's instructions.

The claimant's subordinates felt there was a health issue and reported the employer to the health inspector. This upset the employer. On October 3, 2008, the health inspector came. During the inspection, the newly hired general manager found an item in a room. She told the claimant she found one item behind a drape. The claimant was supposed to have inspected the rooms earlier that day but did not have time. The employer was having her work at the front desk and housekeeping. She did not have time for an inspection.

On October 6, 2008, the employer terminated the claimant for failure to reprimand housekeepers. Within a week of the claimant's separation, the employer terminated three other people. The person who was hired to fill the claimant's position was a friend of the newly hired general manager.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer must establish not only misconduct, but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged, but there was no misconduct.

**DECISION:**

The representative's October 28, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw