

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PERCY B TYE
Claimant

APPEAL NO. 11A-UI-04786-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOTEL JULIEN DUBUQUE
Employer

OC: 02/20/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 31, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice, or participate in the hearing. Chanelle Scott, the executive housekeeper, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late June 2010. He worked as a part-time housekeeper.

In September 2010, the employer gave the claimant a warning for abusing his break time. In November 2010, the claimant received a written warning for swearing in a public area in front of employees. The warning also addressed his failure to dress appropriately; his shirt was not tucked in.

On February 18, 2011, the claimant reported to work and told co-workers he was still intoxicated from drinking the night before. Scott initially thought the claimant was joking. After she noticed he had a hard time getting his coat on and walking, she told him to leave. Scott concluded the claimant was not able to work that day.

Although the claimant left when Scott told him to, he returned to work a short time later and tried to work. Scott again sent him home. The last time the claimant returned to work on February 18, the general manager talked to him and discharged him. The employer discharged the claimant because of the written warnings he received, his February 18 conduct was again unbecoming behavior, and he failed to leave and stay home that day.

The employer requires employees who report to work to be able to work. If they cannot work, the employer expects the employee to notify the employer he is unable to work and stay home.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because his supervisor told him to go home on February 18 after she concluded he was unable to work that day. Instead of going home and staying home that day, the claimant returned to work two more times to work, The third time he returned to work that morning, the general manager discharged him. The claimant's failure to follow his supervisor's directive to go home amounts to insubordination. The claimant committed work-connected misconduct when he failed to follow his supervisor's directive on February 18. As of February 20, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he may have received will be remanded to the Claims Section to determine.

DECISION:

The representative's March 31, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 20, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account is not subject to charge. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Clams Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw