

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH R DENNIS SR
Claimant

APPEAL NO. 06A-UI-10589-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARRIOTT HOTEL SERVICES INC
Employer

**OC: 12/18/05 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the October 19, 2006, reference 02, fact-finder's decision that held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference was scheduled for and held on November 14, 2006. The claimant participated. The employer participated by Ms. Kim Compton, Sara Josefson, Ms. Shull-Wendell, Aourosh Sepehri and Sam Kolner.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his employment and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant last worked for this employer from August 13, 2005 until September 29, 2006, when he was discharged from employment. Mr. Dennis held the position of utility aisle attendant. He was employed on a full-time basis and paid by the hour. The claimant's supervisor was Ms. Shull-Wendell.

Mr. Dennis was discharged after he violated one of the employer's strict employment policies by visiting the employer's facility during non working hours in an intoxicated condition. Under established policies, employees are prohibited from visiting the hotel facilities without permission during times that they are not scheduled to work. The employer has a strict policy which prohibits employees from being under the influence of alcohol "while on company time or premises."

Mr. Dennis, Sr. violated the company policies by visiting the hotel during non working hours on September 25, 2006 after imbibing a number of alcoholic beverages. Although the claimant's stated purpose was to check scheduling, Mr. Dennis remained in a banquet area for an extended period of time drawing attention to himself by having slurred speech, unsteady gait and the general appearance of being intoxicated. A number of employees who were present

noted the claimant's condition and reported the matter. When questioned, Mr. Dennis admitted that he had consumed alcoholic beverages before visiting the facility and that he was "having a good time" on his day off.

Based upon the degree of intoxication described by the witnesses, the employer believed the claimant had clearly violated its policy prohibiting employees from being intoxicated on the premises whether on or off duty and discharged the claimant.

It is the claimant's position that medication taken by prescription may have enhanced the effects of the alcohol. It is the claimant's further position that although he was given a copy of the employer's rules and acknowledged understanding them, he did not read them and did not know that his conduct could result in his termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds that the evidence has established the claimant was discharged for a violation of a strict company rule that the claimant been given notice of and had acknowledged.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that Mr. Dennis had been given a copy of company rules and had acknowledged their receipt and the understanding of the rules. The evidence further establishes that Mr. Dennis violated the company rule by reporting to the employer's hotel in an intoxicated condition on September 25, 2006. The administrative law judge finds the employer's rule to be reasonable and work related. Although Mr. Dennis, Sr. maintains that he was not aware, the administrative law judge notes that the evidence established that the claimant had received a copy of the rules and had acknowledged that he had read and understood them.

While Mr. Dennis maintains that he was not intoxicated on the day in question, the evidence establishes that the claimant was slurring his words, was unsteady in his gait and generally appeared to be intoxicated by a number of individuals who observed the claimant on that date and reported the matter to company management. Mr. Dennis testified that he knew that taking alcohol in addition to prescribed medications would enhance the effects of alcohol. Although Mr. Dennis did not intend to be discharged, the evidence establishes that his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Mr. Dennis knew or should have known that reporting to his place of employment, even during non working hours, in an intoxicated condition could result in his discharge from work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds the claimant is overpaid unemployment insurance benefits in the amount of \$1,034.00 pursuant to Iowa Code section 96.3-7 because a decision has determined the claimant was ineligible to receive benefits due to being discharged under disqualifying conditions.

Since the claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until the claimant has requalified or is otherwise eligible.

DECISION:

The decision of the fact finder dated October 19, 2006, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and has

been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,034.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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