

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIE D SMITH
Claimant

ARYA HOSPITALITY INC
Employer

APPEAL NO. 14A-UI-04682-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/06/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 28, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. An in-person hearing was held on August 13, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Daniel Zeno. Gloria Smith participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a night auditor at the Fairfield Inn from May 18, 2012 to April 2, 2014. He was informed and understood that under the employer's work rules; insubordination, refusal, or failure to perform a reasonable order of a supervisor would be considered work misconduct. The work rules also discourage non-emergency personal phone calls during work hours and state that a message should be taken if such a call is received at the front desk. The General Manager was Gloria Smith. The Assistant Manager was Steve LaTour.

One of the front desk clerks named Dominique often received and made non-emergency personal phone calls. On or around April 1, 2014 Dominique was to come in at 7 a.m. to relieve the claimant at the front desk. Before Dominique showed up, her boyfriend called to talk to her. The claimant determined that the call was not an emergency and did not let Dominique know that the boyfriend had called when she reported to work. Later, Dominique complained to Steve LaTour that the claimant had failed to take a message from her boyfriend.

LaTour called the claimant at home in the morning and woke him up to ask him why he had not taken a message or let Dominique know about the call from the boyfriend. The claimant tried to explain about the policy and apologized, but LaTour was angry and would not accept the claimant's explanation. The claimant was upset by LaTour's going on and on about this. He ended up calling Gloria Smith who was out of town and complaining about LaTour. Smith told him that she would take care of things when she returned to the hotel.

On April 2, 2014 the claimant left a letter for LaTour that included a copy of the personal phone call policy and encouraged LaTour to read it and go over the policy with Dominique. LaTour had previously worked at the Kirkwood Hotel and had notified employees that he was going to be taking a job at the Hilton Hotel. As a result, the claimant wrote that he was sure both the Kirkwood Hotel and Hilton Hotel had similar policies. The letter ended up with the following admonition. "Please do not ever call my phone again regarding non-emergency employee phone calls. You need to use better judgment."

When LaTour received the letter, he complained to Gloria Smith and other management staff that he found the letter offensive and insubordinate and recommended that the claimant be discharged. Smith had dealt with the claimant and LaTour's mutual complaints when she was out of town a couple of month earlier and had told both of them that they needed to get along. She considered the letter rude and insubordinate and decided to discharge him for leaving the letter for LaTour. She called the claimant and informed him that he was discharged. The claimant had not received any formal discipline during his employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the tone of the letter was blunt and untactful, it needs to be considered in light of LaTour's phone call to the claimant waking him up to criticize him repeatedly about something that appears pretty trifling. Under the circumstances, his admonition not to call him at home about a nonemergency matter was not unreasonable. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 28, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can