

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LESLIE GRADY
1230 – 34TH ST
DES MOINES IA 50311

AIRPORT LODGING LLC
1501 RIVER DR
MOLINE IL 61265

Appeal Number: 06A-UI-03989-CT
OC: 06/19/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Leslie Grady filed an appeal from a representative's decision dated March 30, 2006, reference 10, which denied benefits based on his separation from Airport Lodging. After due notice was issued, a hearing was held by telephone on April 28, 2006. Mr. Grady participated personally. The employer participated by Jeff Smith, General Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Grady was employed by Airport Lodging, doing business as Radisson Des Moines Airport, from September 15, 2005 until March 5, 2006. He

was employed full-time, primarily as a shuttle van driver. He performed other tasks as assigned. He was discharged for allegedly swearing at and threatening a coworker.

On March 5, Mr. Grady was having a conversation with Martha Spears concerning whether the dishwasher was broken. Another employee, Christine Wright, joined the conversation and, at some point, she and Mr. Grady became involved in an argument. He said to her, "get the hell out of my face." Ms. Wright reported that he said, "Shut the fuck up" and "Fuck you. Get out of my business or I'll bust you up." Mr. Grady and Ms. Wright did not have a history of animosity. Mr. Grady had not engaged in similar conduct on any prior occasions. The above matter was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Grady was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged Mr. Grady after a coworker reported that he swore at her and threatened to physically harm her. Mr. Grady denied having made the statements attributed to him by Ms. Wright. Ms. Wright was not offered as a witness to be examined and cross-examined. Ms. Spears, who was present for some portion of the incident, was not offered as a witness by either party. The employer's hearsay testimony concerning what was said to Ms. Wright is admissible evidence. However, the administrative law judge must determine if the hearsay testimony should be accorded more weight than Mr. Grady's sworn testimony.

There was nothing to detract from the credibility of Mr. Grady's testimony. There was no history of problems between Mr. Grady and Ms. Wright such as would bolster her contention that he threatened her. He did not have a history of engaging in similar conduct during the course of his employment. Given these factors, and the fact that the employer had the burden of proving misconduct, the administrative law judge resolves the conflict in the testimony in Mr. Grady's favor. His statement to Ms. Wright to "get the hell out of my face" was not so outrageous that it constituted an act of misconduct. The employer did not allege any other acts of misconduct that contributed to the decision to discharge. Inasmuch as the employer failed to establish that Mr. Grady threatened Ms. Wright, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 30, 2006, reference 10, is hereby reversed. Mr. Grady was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs