

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA M WATTS
Claimant

APPEAL NO. 10A-UI-04799-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAJNI INC
Employer

OC: 02/28/10
Claimant: Appellant (2)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 25, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 30, 2010, in Davenport, Iowa. Claimant participated. The claimant was represented by Andre Harrison. Bobby Malloy was a witness for the claimant. Employer participated by David Fuglesth, General Manager. The record consists of the testimony of Laura Watts; the testimony of Bobby Malloy; the testimony of David Fuglesth; and Claimant's Exhibits A-F.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case operates a Hampton Inns hotel located in Davenport, Iowa. The claimant was hired on May 5, 2008, as a full-time front desk auditor. She was terminated on February 28, 2010, at the end of her shift.

The incidence that led to the claimant's termination occurred on February 24, 2010. The claimant ran a daily audit report at 11:30 a.m., instead of waiting until after 12:00 p.m. The claimant did not know that she had done anything wrong. She had been previously told that if the hotel was full and that all the guests were checked in, that the report could be run. On February 24, 2010, the hotel was full and so the claimant ran the report at 11:30 a.m. She had done this in the past without discipline. Another employee had done this as well, also without any discipline.

The claimant had received a warning in January 2010 for failing to deliver newspapers to the guests. The newspapers had arrived late that day due to weather conditions. The claimant was required to check out guests and make breakfast and was doing these tasks when the papers

finally arrived. The claimant asked the breakfast attendant to deliver the newspapers as she had been instructed to do by management. The breakfast attendant refused to deliver the papers.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes good faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to conclude that the claimant was discharged for misconduct. The claimant was terminated because she ran the audit report at 11:30 a.m. instead of waiting until after 12:00 p.m. The claimant credibly testified that she had been told that she could run the report before 12:00 p.m. if the hotel was full. She had done this in the past. Bobby Malloy, a former employee, also testified that the report was run before midnight if the hotel was full. Neither Ms. Malloy nor the claimant had been disciplined previously for having run the report under these circumstances.

David Fugleseth, the general manager, testified that he also took into account other warnings that he had given the claimant, some of which date back to October 2008. One of the claimant's warnings was because she failed to deliver newspapers to the doors on one occasion. The claimant testified that the papers had arrived late. She was attending to guests and preparing breakfast. She had asked the breakfast attendant to deliver the papers and the attendant refused. Mr. Fugleseth admitted that he did not fully investigate the situation before issuing that warning.

At most the evidence shows that the claimant violated work procedure by running the audit prior to midnight. There is no evidence that she did so deliberately or that there was a pattern of conduct to suggest anything more than a mistake on her part. Misconduct has not been shown. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 25, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css