

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID M BOURDEAU**  
Claimant

**APPEAL NO. 08A-UI-05168-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INNS OF IOWA LTD**  
Employer

**OC: 04/27/08 R: 12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

Inns of Iowa, Ltd., filed a timely appeal from an unemployment insurance decision dated May 20, 2008, reference 01, that allowed benefits to David M. Bourdeau. After due notice was issued, a telephone hearing was held June 24, 2008, with Mr. Bourdeau participating. Owner's representative Tim Treischmann participated for the employer, which was represented by Liz Sillars of Unemployment Services, LLC. Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for a current act of misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: In his capacity as president of D'Andrea Hotel, Inc., David M. Bourdeau entered into a Management Agreement with Inns of Iowa, Ltd. to operate the Best Western Regency, Super 8, and Comfort Inn motels located in Marshalltown, Iowa, effective August 1, 2007. The agreement gave D'Andrea Hotel, Inc., the authority to select the general manager of the properties, who would be an employee of Inns of Iowa. Mr. Bourdeau selected himself.

The Management Agreement required that Mr. Bourdeau be bonded and insured. It also required that all checks be signed by at least two persons. It required that Mr. Bourdeau seek written approval for all non-emergency expenditures of over \$1,000.00. It required prior approval for marketing and advertising expenses of over \$1,000.00. Finally, it required variance reports for profit and loss statements for each month.

Although the Management Agreement lists the address of Patricia Schade, president of Inns of Iowa, as Marshalltown, Iowa; Ms. Schade divides her time between residences in Arizona and Nevada. In the spring of 2008, Tim Treischmann was hired as the representative of Inns of Iowa. After reviewing bank and financial records, he concluded that Mr. Bourdeau, as general manager and as president of D'Andrea Hotel, Inc., had failed to live up to the terms of the

Management Agreement. Inns of Iowa, Ltd. terminated the contract and discharged Mr. Bourdeau effective April 30, 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. For the reasons which follow, the administrative law judge concludes that disqualification is not appropriate.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements that it must prove is that the discharge was for a current act of misconduct. See 871 IAC 24.32(8).

The employer has established a continuing pattern of misconduct by the claimant in his failure to abide by the provisions of the Management Agreement. However, in establishing the continuing pattern, the administrative law judge concludes that the employer knew or reasonably should have known well before April 30, 2008, of these actions and omissions. In failing to perform due diligence, the employer allowed the situation to continue from August 1, 2007, until April 2008. Because of the delay, the administrative law judge concludes that the employer has not established discharge for a current act of misconduct. No disqualification for unemployment insurance purposes can be imposed.

**DECISION:**

The unemployment insurance decision dated May 20, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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