

**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**

**DERRICK WILLIAMS
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DAVENPORT IA 52802-1021**

**KINSETH HOTEL CORPORATION
c/o UNEMPLOYMENT SERVICES LLC
PO BOX 749
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-07372-ET
OC: 06-25-06 R: 04
Claimant: Respondent (1)**

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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 13, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 8, 2006. The claimant participated in the hearing. Dianna Hagner, Bookkeeper/Human Resources; Jeremy Holke, General Manager; and Kellen Anderson, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time public areas worker for Kinseth Hotel Corporation from March 9, 2005 to June 6, 2005. On June 6, 2005, a guest notified the employer that the claimant had solicited employment from her and made disparaging remarks about the hotel job. The guest was staying at the hotel while interviewing applicants for a new grocery store opening across the street. The claimant returned from lunch, clocked in, and went to help the guest carry crates of documents to her car when the conversation occurred. He testified she told him she was doing the hiring for the store across the street and he said he was looking for a second job. The guest told him to fill out an application and she would look for it. The claimant admits telling the woman he "didn't really like (his) job" but denies making negative remarks about the employer. After the guest told the employer about the conversation the claimant was called into the office and his employment was terminated. The claimant was warned April 14 and May 20, 2005, for using profanity on the job toward a co-worker; on June 3, 2005, for reading the paper and refusing to leave a room while a housekeeper was trying to clean it; and June 8, 2005, for going to an appointment without first notifying his supervisor he was leaving (Employer's Exhibits One through Four). The claimant testified he did not see any of the warnings and his signature is not on any of the warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant used poor judgment in asking a guest about a job opening while on the clock, the guest was there to recruit applicants for job openings and the claimant made conversation with her while helping her carry items to her car. The claimant admits saying he "didn't really like (his) job" but denies disparaging the employer and the employer's witnesses could not testify to what the claimant actually said. The employer did write up four warnings during the three months the claimant worked there but the claimant credibly testified he never saw any of the warnings and the written warnings do not say "refused to sign" as required by the employer's policy. Although not condoning the claimant's behavior during his employment, the administrative law judge cannot conclude that his actions June 6, 2005, rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 13, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/pjs