

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY MCELWEE
Claimant

APPEAL NO. 07A-UI-09883-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERNATIONAL EVENTS CENTER INC
Employer

OC: 09-23-07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 24, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder in Des Moines, Iowa, December 10, 2007, and then continued by telephone conference call on December 27, 2007. The claimant participated in the hearing with her witness/former bartender/sister, Kelly McElwee. Chris Cardani, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 assistant manager for Val Air Ballroom from April 15, 2003 to September 24, 2007. On September 15, 2007, the claimant was in charge during a wedding party at the Val Air. On September 16, 2007, another employee called General Manager Chris Cardani and suggested he go and look at the Val Air. When Mr. Cardani arrived he found a broken porthole in the front door, a broken window in the historical ticket booth and brass lights up the stairs that were ripped and hanging by their wires. He then checked the security camera and observed a limousine drive into the building and onto the dance floor where the wedding party loaded wedding presents into the car. At the end of the evening two additional vehicles and a truck pulled onto the dance floor and started doing "doughnuts" on the floor when the claimant was present and she did not try to stop any of the vehicles from entering the dance floor. As a result of the events of that evening and after reviewing the videotape Mr. Cardani suspended the claimant without pay and told her to return September 24, 2007, at noon but the claimant showed up at 10:30 a.m. that day, entered the building and removed some of her personal items as well as several of the employer's business documents. She left before Mr. Cardani arrived and after he did so he discovered the missing business documents and contacted the local police department who charged the claimant with fifth degree theft. The claimant did not return to work after September 15, 2007, except to pick up her belongings and

the business records September 24, 2007, and Mr. Cardani did not speak with her again until the fact-finding interview, although the claimant maintains her employment was never terminated. Mr. Cardani did not believe the claimant could have necessarily stopped the vandalism but believed she should have contacted him to notify him of the damage and that was the reason for the suspension. The claimant testified Mr. Cardani told her not to call him that day because he was going to a football game but he expected her to call him with the vandalism report because it occurred early the following morning. Her employment was terminated for taking business records and failure to meet with the employer at noon September 24, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant may not have been able to control the vandalism she could have prevented the vehicles from driving on the dance floor and if she was aware of the vandalism she should have reported it to Mr. Cardani. Regardless, she was suspended for one week and told to report to work at noon September 24, 2007, to discuss her employment status. Rather than doing so, however, she went to the building at 10:30 a.m. and removed business documents as well as some of her personal belongings from the employer's premises. The act of taking the business documents was not only completely inappropriate but also deemed theft by the local

police department and she never returned to talk to Mr. Cardani. Consequently, this case could also be considered a voluntary leaving of employment but the employer characterizes it as a termination. Although the claimant may not have been directly told that her employment was over, she did not return to work after September 24, 2007, which indicates she knew after taking the documents, failing to meet with Mr. Cardani and having the police come to her house that she no longer was employed at the Val-Air. The administrative law judge concludes the claimant's conduct September 24, 2007, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The October 24, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css