

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L STEPHENS
Claimant

APPEAL NO. 17A-UI-06941-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMI EMPLOYEE MANAGEMENT
Employer

OC: 05/28/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tammy Stephens (claimant) appealed a representative's June 30, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with TMI Employee Management (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 26, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in March 2017, as a full-time front desk person for the Comfort Inn and Suites. The employer had a handbook but the employer did not give the claimant a copy of one. The employer did not issue the claimant any warnings during her employment.

Twice while the claimant was working with the general manager, the general manager did not finish a room reservation by pushing a button. The computer did not show that a guest was registered in the room. The claimant checked guests into the rooms the general manager failed to properly check in. The claimant rarely drinks alcohol. Once, the general manager accused the claimant of drinking at work. The claimant was not drinking at work.

At the front desk there is a sign that tells customers to call a number if there is no one at the desk. Once there was an altercation in the pool area. The employer had not given her any training on what to do in situations such as this. The claimant took the telephone with her into the pool area as she handled the altercation. If a guest were to have come to the front desk, they could have reached her at her telephone. The employer thought she should have called

the police. On June 13, 2017, the general manager terminated the claimant for double booking rooms, drinking at work, and mishandling the pool incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 30, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs