

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALPHONSO L JOHNSON
Claimant

APPEAL NO. 10A-UI-06317-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORP
Employer

**OC: 03/21/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alphonso Johnson filed an appeal from a representative's decision dated April 20, 2010, reference 01, which denied benefits based on his separation from Kinseth Hotel Corporation. After due notice was issued, a hearing was held by telephone on June 16, 2010. Mr. Johnson participated personally. The employer participated by John Snow, General Manager, and was represented by Larry Way of Employers Unity.

ISSUE:

At issue in this matter is whether Mr. Johnson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Johnson began working for Kinseth Hotel Corporation on May 5, 2000. He worked full time in housekeeping at a Holiday Inn operated by the employer. His last day of work was March 18, 2010.

On March 19, a friend of Mr. Johnson's notified the employer that he would be absent due to illness. In fact, he was in jail in Davenport, Iowa. He was released from jail on March 21. He contacted the employer during the early evening of March 22. He was told the employer would need to check with others to determine if he still had employment. He was notified on March 23 that his job was no longer available.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Johnson was discharged from his employment. Although the employer contended that he was absent for three shifts without notice, the evidence did not establish this contention. He last worked on March 18 and was scheduled to return to work at midnight on March 19. His friend called to report that he would be absent on March 19. Mr. Johnson was next in contact with the employer on March 22, before the start of his shift. Therefore, he was only absent without calling in on March 20 and 21, which is not

three days. Because it was the employer's decision that he could not return to the employment, the separation was a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Johnson was discharged because of two consecutive unreported absences. The absences are unexcused as they were due to matters of purely personal responsibility, incarceration. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Johnson knew or should have known that he had to report his absences to the employer. It was he who created the situation that made it impossible to contact the employer to report his absences. The administrative law judge concludes that two consecutive unreported absences is sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. As such, benefits are denied.

DECISION:

The representative's decision dated April 20, 2010, reference 01, is hereby affirmed as to result. Mr. Johnson was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs