

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE A OLIVER
Claimant

APPEAL NO. 12A-UI-14920-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 11/11/12
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 13, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 17, 2013. The parties were properly notified about the hearing. The claimant did not participate in the hearing but submitted documentation in lieu of participating. Dina Smith participated in the hearing on behalf of the employer with witnesses, Norm Granback, Wendy Suckow, and Betty Herrig. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as director of sales from September 4, 2007, to November 12, 2012. She was informed and understood that under the employer's work rules, employees were prohibited from making false or misleading statements regarding an employee or taking any discourteous action toward another employee.

The Buena Vista football team had reserved a block of rooms for a hotel stay on November 11, but was required to submit its rooming list by November 3, 2012, to make sure it was not dropped out the reservation system. It was part of the claimant's job duties to monitor this to make sure there were no problems.

On November 5, the general manager, Norm Granback, discovered that the Buena Vista room block had been dropped from the reservation system due to the lack of a rooming list. He sent an email to the claimant; sales manager, Betty Herrig; and guest services manager, Wendy Suckow, warning them about the dropped room block situation.

After the email was sent, Herrig got the rooming list from Buena Vista on November 5 and put it in Wendy Suckow's mailbox to enter the information. When the claimant saw Herrig do this, the claimant took the housing list out of Suckow's mailbox and slid it under a pile of papers on Suckow's desk. She convinced Herrig that they would falsely represent to Granback that the rooming list had come in on November 1 and was put in Suckow's mailbox on the morning of November 2. The claimant did this to falsely shift the blame for the problem to Suckow. The claimant in fact did falsely represent to Granback on November 5 that the rooming list had come in on November 1 and was put in Suckow's mailbox on the morning of November 2.

On November 6, the claimant and Herrig approached Suckow and confronted her about why the rooming list had not been entered into the reservation system. When Suckow truthfully responded that she never received the list, the claimant pretended to find the room list under the pile of papers where she had planted the list. Suckow initially thought it was possible she had missed the rooming list, but later determined that was not possible and reported what had happened to Granback.

Granback discovered the November 5 email from Buena Vista that disproved the assertion that the rooming list was received on November 1. Herrig then admitted to Granback that the claimant had instructed her to falsify the information as to when the rooming list was received.

As a result of the claimant's misrepresentations and attempt to shift the blame to Suckow, Granback discharged the claimant on November 12, 2012. The employer also discharged the claimant for manipulating the status information for some group booking in October and November to making sales goals.

The claimant filed for and received a total of \$ 3,168.00 in unemployment insurance benefits for the weeks between November 11, 2012, and January 5, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's dishonest behavior in violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the

claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated December 13, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs