

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN JACKSON
Claimant

KINSETH HOTEL CORPORATION
Employer

APPEAL 21A-UI-14307-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation and Lost Wages Assistance Program
PL 116-136, Sec. 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Kinseth Hotel Corporation., the employer/appellant, filed an appeal from the June 10, 2021, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2021. The employer participated through Neal Roth, regional director of operations, and Jackie Boudreaux, ADP hearing representative. Mr. Jackson did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Was Mr. Jackson discharged for disqualifying job-related misconduct?
Was Mr. Jackson overpaid benefits?
If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jackson began working for the employer on August 28, 2017. He worked as a full-time lead server in the restaurant inside the Hilton Garden Inn in Iowa City, Iowa. He was separated from employment on February 5, 2020.

In late December 2019, Mr. Roth learned that an employee at the Hilton Garden Inn was selling illegal drugs, and that Mr. Jackson was one of the employees buying illegal drugs from that employee and using illegal drugs at work. Unrelated, on December 31, 2019, a customer fell at the hotel. Mr. Roth reviewed video footage as he investigated the fall. While reviewing the video footage, Mr. Roth saw Mr. Jackson and another employee go into and leave an elevator

closet several times. Employees were not supposed to be in the elevator closet. This raised Mr. Roth's suspicions. There was no video camera inside the closet so Mr. Roth could not see what Mr. Jackson was doing in the closet.

Mr. Roth had a security camera installed in the elevator closet. Mr. Roth reviewed video footage from the camera inside the elevator closet for ten days. While reviewing the video footage, Mr. Roth saw Mr. Jackson take a baggie out of his pocket. The baggie contained a white powder. Mr. Jackson poured the white powder on a flat surface and used a credit card like object to chop up the white powder. Mr. Jackson then took a straw and snorted the white powder up his nose.

The employer's policy provides that an employee may be subject to discipline for any action that would violate a city or county ordinance or state or federal law. Mr. Jackson acknowledged receiving the policy on August 28, 2017.

On February 5, 2020, the employer called Mr. Jackson into the office and showed him screenshots of the video from when he was in the elevator closet. Mr. Jackson did not deny using illegal drugs at work. Instead, he encouraged the employer to terminate the employment of other employees who had also used illegal drugs at work. The employer terminated Mr. Jackson's employment effective immediately. The employer also terminated the employment of several other employees based on the video footage from inside the elevator closet.

Mr. Jackson has received \$0.00 in REGULAR unemployment insurance (UI) benefits, \$0.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$0.00 in Lost Wage Assistance Payments (LWAP) benefits since March 14, 2021, the effective date of his claim.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Jackson 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.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Jackson used illegal drugs while at work, in violation of its policy. Mr. Jackson did not deny the allegation. The employer has established disqualifying misconduct. Benefits are denied.

Since Mr. Jackson has not received any state or federal unemployment insurance benefits since March 14, 2021, the effective date of this claim, the issues of repayment and chargeability are moot.

DECISION:

The June 10, 2021, (reference 02) unemployment insurance decision is reversed. Mr. Jackson was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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September 20, 2021
Decision Dated and Mailed

dz/scn