

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JULIE L MAYDEW
609 – 18TH ST
WEST DES MOINES IA 50265 4816**

**KINSETH HOTEL CORPORATION
c/o EMPLOYERS UNITY/TALX
PO BOX 749000
ARVADA CO 80006 9000**

**Appeal Number: 06A-UI-02689-DWT
OC: 02/05/06 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Kinseth Hotel Corporation (employer) appealed a representative's February 24, 2006 decision (reference 01) that concluded Julie L. Maydew (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant was initially at the hearing. After the employer and the employer's representative were connected to the hearing conference, the claimant's telephone connection was gone. The claimant's cell phone was called again. The claimant did not answer her cell phone. A message was left for the claimant to contact the Appeals Section immediately if she wanted to participate in the hearing. As of the date of this decision the claimant has not again contacted the Appeals Section again. Karen Bently, an Employers Unity/TALX representative, appeared on the employer's behalf with Carolyn Berendt, the

general manager, as the employer's witness. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 1, 2005. The employer hired the claimant to work as a part-time, on-call banquet worker. At the time of hire, the employer informed the claimant that the employer did not allow any employee to threaten, intimidate or physically harm another individual at work. If an employee violated this policy, the employer would immediately discharge the employee.

On November 26, 2005, the claimant and a co-worker engaged in a confrontation about the other person's work performance. The head chef heard the women argue and told them to pay attention to their work performance because everyone needed to work together as a team at the banquet. Shortly after the head chef talked to them, the claimant and co-worker again engaged in a heated verbal confrontation in a stairwell. Immediately after this encounter, the co-worker reported that the claimant threatened to physically harm her. The co-worker indicated she was afraid to work with the claimant any longer.

When the employer talked to the claimant, she admitted she may have verbally threatened to physically injure the co-worker, but the claimant would never have actually hurt the co-worker.

The employer decided to discharge both employees for violating the employer's zero tolerance workplace violence policy. The employer discharged the claimant on November 26, 2005.

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending February 11 through March 18, 2006. The claimant received her maximum weekly benefit amount of \$115.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's conduct on November 26, 2005, shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant not only continued to argue with a co-worker after the chef talked to the claimant and her co-worker, the claimant also threatened to physically injure her co-worker. The claimant committed work-connected misconduct. Therefore, as of February 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending February 11 through March 18, 2006. The claimant has been overpaid a total of \$690.00 in benefits she received for these weeks.

DECISION:

The representative's February 24, 2006 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through March 18, 2006. The claimant has been overpaid and must repay a total of \$690.00 in benefits she received for these weeks.

dlw/s