

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LADONA M THOMPSON

Claimant

APPEAL NO. 10A-UI-12735-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICROTEL INNS AND SUITES

Employer

OC: 10/25/09

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ladona Thompson, filed an appeal from a decision dated September 1, 2010, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 29, 2010. The claimant participated on her own behalf. The employer, Microtel Inns and Suites (Microtel), participated by General Manager Gary Whalen

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ladona Thompson was employed by Microtel from August 30, 2009 until July 22, 2010 as a full-time night auditor. Part of the job duties of the front desk worker is to do laundry. General Manager Gary Whalen had spoken with her several times about the laundry not being done completely by the end of her shift. At a staff meeting the claimant provided facts and figures showing that, during periods when the hotel had a high occupancy, it was not possible to get all the laundry done given the capacities of the washers and dryers. Some changes were made to personnel shifts and duties to try and address this problem.

On July 20, 2010, Assistant Manager Christine Patterson notified Mr. Whalen the claimant had not done all the laundry the night before but she had found Ms. Thompson's homework and a resume on the company computer. At the time of hire Owner Ryan Belford had said she was free to do her homework as long as her other work was done. The claimant did homework while the laundry was washing and drying. June 2010 Mr. Whalen posted a note on the computer monitor stating it was not to be used for any non-business-related purposes and Ms. Thompson did not use it for personal use after that.

The claimant was discharged because the laundry was not done and homework was found on the computer.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer has not successfully rebutted the claimant's testimony about the amount of laundry that could be done in any given eight-hour shift given the washer and dryer capacities and the laundry generated by a full occupancy. The employer has also not provided any evidence as to when the homework found on the computer was actually put there, whether before or after he posted the note.

The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

The employer has failed to meet its burden of proof to show the claimant was discharged for substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of September 1, 2010, reference 03, is reversed. Ladona Thompson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css