

**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**

**PAUL D MORSE
1548 – 31ST ST
DES MOINES IA 50311**

**SHANER OPERATING CORPORATION
DES MOINES SAVERY HOTEL
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

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PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-02667-H2T
OC 02-01-04 R 03
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/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 1, 2004. The claimant did participate. The employer did participate through Kevin Altes, Human Resources Director, Randy Haynes, General Manager and was represented by Judy McBroom of Employers Unity.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an executive housekeeper full time beginning February 6, 2002

through February 4, 2004 when he was discharged. On January 9, 2004 and January 13, 2004 Mr. Haynes, the hotel's General Manager, specifically instructed the claimant to hold weekly meetings with his staff of two supervisors, and to make notes of those meetings and deliver them to Mr. Haynes. The claimant did not thereafter make notes of any meetings that were held and thus never delivered any notes to Mr. Haynes. The claimant alleges that two meetings were held, one on January 14, 2004 and another on January 22, 2004. When the claimant was terminated on February 4, 2004 he had not held a meeting with his subordinates in 13 days. Additionally, at the meetings with Mr. Haynes the claimant was specifically instructed to write up one of the housekeeping staff for a uniform violation. The claimant never followed through with writing up the subordinate employee despite his admission that Mr. Haynes had specifically instructed him to do so. Part of the claimant's regular and normal job responsibilities were to discipline employees working under him. The claimant never told Mr. Haynes he would not write up the employee as instructed, he just failed to perform the required action.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant 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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The claimant was specifically instructed to write up an employee. The claimant failed to follow Mr. Haynes reasonable instruction. It's clear that Mr. Haynes had the authority to direct the claimant to discipline one of the housekeepers, but the claimant disagreed with Mr. Haynes decision on how to handle the discipline. It was not up the claimant to impose his will over the decision of Mr. Haynes. The claimant's refusal to follow a reasonable instruction from his direct supervisor is insubordination. The claimant had previously been disciplined and had been warned that his job was in jeopardy. The claimant's insubordination constitutes disqualifying misconduct. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 2, 2004, reference 01, decision is reversed. The claimant 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. The claimant is overpaid benefits in the amount of \$2,208.00.

tkh/kjf