

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN W STRAWN
Claimant

APPEAL NO. 11A-UI-16047-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTURY IOWA MOTELS LLC
Employer

**OC: 06/19/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Steven W. Strawn filed a timely appeal from an unemployment insurance decision dated December 7, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was begun in Des Moines, Iowa on March 26, 2012. It concluded on August 8, 2012. Mr. Strawn participated and was represented by Michael J. Burdette, Attorney at Law. Matthew Campbell testified for the claimant. Claimant Exhibit One was admitted into evidence. General Manager John Sullivan participated on behalf of the employer, Century Iowa Motels. Eric Lientz, Hallie Durnavich, Rossie Williamson, Kevin Williamson and Diane Meseck also testified. Employer Exhibits A through D were admitted into evidence. This matter is considered on a consolidated record with 12A-UI-08606-A and 12A-UI-08607-A. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Steven W. Strawn was a maintenance worker at a Ramada Inn owned and operated by Century Iowa Motels from December 7, 2009 until he was discharged June 16, 2011. The final incident leading to discharge occurred on June 14, 2011.

Eric Lientz was the maintenance worker on duty for the day shift on June 14, 2011. Mr. Lientz spent several hours cleaning carpet in an area adjacent to the kitchen. The area was heavily stained. The mechanized equipment that was approximately four years old was unable to remove all of the stains. Hand scrubbing was also required.

General Manager John Sullivan had told Mr. Lientz to tell Mr. Strawn to complete the carpet cleaning when Mr. Strawn reported to work for the evening shift. When Mr. Lientz passed the information on to Mr. Strawn, Mr. Strawn replied that he was not a “fucking Mexican” and would leave work rather than complete the assigned task. Mr. Lientz advised Mr. Sullivan who reiterated that Mr. Strawn was to complete the task. Mr. Strawn left work rather than complete

the assigned task. He left within a few minutes after initially reporting to work. Later in the evening Mr. Strawn called a coworker, Matthew Campbell, to say that he had left work because he was ill "just in case something came up."

Mr. Strawn saw his physician on June 15, 2011. The physician gave Mr. Strawn a prescription for an antibiotic. Mr. Strawn called in sick on June 15, 2011 but was discharged by Mr. Sullivan and Guest Services Manager Hallie Durnavich when he reported to work on June 16.

Mr. Strawn was a very opinionated individual who often expressed negative comments about company management, the facilities and coworkers. His language was laced with obscenities. He frequently expressed negative sentiments towards individuals, including coworkers, of Mexican descent. Employees, including Matthew Campbell, Mr. Strawn's witness, had complained to management and to one another about Mr. Strawn's behavior. He had received prior warnings and informal counsel about his attitude and his language. He steadfastly denied making inappropriate comments and stated that other people lied about him.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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. See Iowa Code section 96.6-2. The employer's evidence consists of the testimony of six individuals and documentary evidence that includes the written statements of other coworkers. The evidence is consistent. It portrays an individual who freely used inappropriate language at the workplace despite warnings and informal counseling. It establishes that he resisted performing assigned tasks and left the workplace on June 14 rather than perform the work assigned to him.

Throughout these proceedings Mr. Strawn denied the allegations made against him. Even his own witness contradicted his testimony as to his language and behavior. Significantly, Mr. Campbell testified as to Mr. Strawn's telephone call on the evening of the 14th of June. The evidence indicates to the administrative law judge that Mr. Strawn already had begun covering his tracks for the final incident. None of the claimant's assertions, including the assertion that the carpet cleaning equipment was 20-years-old, is corroborated by any other evidence in the record.

The evidence in the record establishes a pattern of inappropriate comments culminating in insubordination in the final event. Benefits are withheld.

DECISION:

The unemployment insurance decision dated December 7, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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