

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

BOBBIE HOUK
916 ADELINE RD
OTTUMWA IA 52501

JAI SHRI INC
FAIRFIELD INN
PO BOX 29
2723 MT PLEASANT
BURLINGTON IA 52601

Appeal Number: 05A-UI-08188-BT
OC: 07/10/05 R: 03
Claimant: Appellant (1)

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 for Misconduct

STATEMENT OF THE CASE:

Bobbie Houk (claimant) appealed an unemployment insurance decision dated August 8, 2005, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Fairfield Inn (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2005. The claimant participated in the hearing. The employer participated through Tammy Clifton, General Manager and Nicole Jones, Front Desk Clerk. Employer's Exhibits One through Three and Claimant's Exhibit A were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time housekeeping supervisor from May 21, 2003 through July 14, 2005. She was discharged for insubordination after a week of a negative attitude. Most employees were receiving annual raises at this time but the claimant's performance did not warrant a raise and actually resulted in a commitment to correct letter, since she already had three written disciplinary warnings in her file. The commitment to correct letter listed the improvements the claimant needed to make within the next 30 days. The claimant's supervisor handed her the letter on July 13, 2005 but the claimant refused to sign it. The following morning, the claimant had the employer add more language and then she signed it. The claimant appeared to be angry and was heard talking about her supervisor.

Later that afternoon, the supervisor noticed the claimant filling out the maintenance guest log. This list advised the maintenance employees of problems in the guest's rooms that had to be taken care of immediately. The claimant was placing general maintenance tasks on the log and the employer directed the claimant to only write the guest room maintenance issues. The claimant said no, became angry and started yelling at the employer. Her voice was loud and could be heard by the guests. The supervisor went into her office and the claimant followed her yelling about how she was suppose to use the log. The front desk clerk shut the employer's door to help minimize the noise. The employer tried to further explain her point but the claimant refused to listen and was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination. She already had three disciplinary warnings in her file and had been given a commitment to correct letter, when she started yelling at the employer when given a reasonable directive. Although the claimant denies yelling, the evidence presented by the employer was more compelling. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 8, 2005, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/s