

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN HARTLEY**  
Claimant

**APPEAL NO: 10A-UI-09806-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CO**  
Employer

**OC: 05/23/10**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Kinseth Hotel Corporation (employer) appealed an unemployment insurance decision dated July 1, 2010, reference 01, which held that Karen Hartley (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2010. The claimant participated in the hearing. The employer participated through Morna Messier, Traveling Manager and Jeff Weyand, Employer Representative. Employer Exhibits One, Two, and Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**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 night auditor from May 15, 2003 through May 24, 2010. She was discharged for five policy violations even after being warned. When checking guests into the hotel with cash or with a company credit card, the employee is required to obtain a personal credit card or a cash damage deposit to cover incidentals or damages. The claimant first violated this policy on April 25, 2009. She received a written warning but violated the policy again on July 11, 2009 and once more on September 1, 2009. The claimant checked in a guest who paid with cash on September 1, 2009 without a credit card or an additional cash deposit. In fact, the claimant checked in this guest without identification.

The employer issued the claimant a final warning on May 7, 2010 after her fourth policy violation. Again she checked in a cash paying guest without a credit card or an additional cash deposit. The claimant failed to obtain a phone number so there was no way to reach this guest.

The warning advised her that any further infractions would result in her termination. In addition to the written warnings, this issue had been brought up numerous times in staff meetings.

The final incident occurred on May 16, 2010 when she checked in multiple rooms under one company's credit card. The credit card covered the rooms and taxes but not any incidentals or damages. The claimant obtained driver's licenses for four guests but failed to secure their personal credit cards or a cash damage deposit. It was subsequently discovered that one of the non-smoking rooms showed evidence of smoking. When the employer discovers smoking in a non-smoking room, the guest is charged a fee in order to clean the room. The employer was unable to charge that particular guest because the claimant failed to properly perform her job duties.

The claimant filed a claim for unemployment insurance benefits effective May 23, 2010 and has received benefits after the separation from employment.

### **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 § 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 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 repeated policy violations even after being warned. She admits she violated company policy but contends it is only unsatisfactory work and not work-related misconduct. However, repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant repeatedly failed to follow the employer's instructions. Her conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated July 1, 2010, reference 01, is reversed. 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs