

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER P LAWLESS
Claimant

APPEAL NO. 11A-UI-15732-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 12/12/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated December 1, 2011, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on January 10, 2012. Claimant participated personally. The employer participated by Ms. Georgia Way, Hearing Representative, and witness, Ms. Jennifer Marburg, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amber Lawless was employed by Kinseth Hotel Corporation from August 1, 2011 until November 9, 2011 when she was discharged by her immediate supervisor. The claimant worked as a part-time housekeeper and was paid by the hour.

The claimant was discharged by her immediate supervisor because Ms. Lawless had requested a "no contact order" be placed upon another employee employed by the hotel corporation.

The claimant and the other employee had been involved in a non-work-related incident that took place away from the employer's facility during non-working hours. Ms. Lawless had been assaulted by the other employee and in conjunction with her complaint to the police the claimant was required to request a no contact order. Although Ms. Lawless explained the circumstances to her supervisor on November 9, 2011, she was nonetheless discharged by the company.

It is the employer's position that company records reflect that Ms. Lawless had quit her job.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the claimant participated personally and testified under oath that she did not quit her job but that she was discharged by her immediate supervisor on November 9, 2011 because a no contact order had been filed against another worker. The evidence in the record establishes that the incident that caused the no contact order took place after working hours away from work and there was no direct nexus or connection with the claimant's employment. Because the claimant had preferred charges against another individual who had assaulted the claimant, the claimant was required to file a no contact order in conjunction with the filing of other charges. Ms. Lawless was discharged although she explained the circumstances to her supervisor.

Based upon the evidence in the record, the administrative law judge finds that the claimant's conduct did not show a willful disregard for the employer's interests or standards of behavior but were based upon a personal necessity to maintain her safety after she had been assaulted by another individual who happened to be employed by the same company. Misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 1, 2011, reference 02, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs