

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE STANLEY SR
Claimant

APPEAL NO. 09A-UI-06232-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**Original Claim: 03/22/09
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Kinseth Hotel Corporation (employer) appealed an unemployment insurance decision dated April 9, 2009, reference 01, which held that Kyle Stanley Sr. (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 May 18, 2009. The claimant did not participate in the hearing; the hearing notice was sent to the last known record of address but it was returned as undeliverable. The employer participated through Lori Faught, Greg Whitfield, David Welch, and employer representative Robin Quon. Employer's Exhibits One through 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance employee from June 21, 2008 through March 9, 2009, when he was discharged after seven disciplinary warnings. The first written warning was issued on November 28, 2008 for theft after he took items out of a guest room. The claimant was suspended for three days as a result of that warning. A second written warning was issued to him on December 29, 2008 for failing to lock the pump rooms and shop doors on December 21 and 28, 2008. He received a third written warning on January 27, 2009 for refusing to stay and clean up a mess after the end of his shift. A toilet overflowed so the claimant had to plunge it; unfortunately some feces spilled onto the floor and instead of cleaning it, he had the guest move to a different room and then left.

Three written warnings were issued on February 26, 2009 for various incidents throughout the month. On February 12, 2009, he left work without completing his job duties and left before his shift was over. The claimant documented that he put a new filter in the heat pump on February 15, 2009 but there was no filter in it when checked. He also unscrewed the wrong

plumbing on a men's urinal, which created a flood and the water had to be shut down in the entire building. This warning placed the claimant on probation until March 15, 2009. The last warning issued on February 26, 2009 resulted from the claimant interfering with other working employees after he was done with his shift.

The final incident occurred on March 8, 2009 when he clocked in at 6:45 a.m. but failed to do any work. Employee Greg Whitfield arrived at work at approximately 8:00 a.m. to work on the pool. The pool lights were not on even though that was one of the first tasks the claimant had to complete. Mr. Whitfield noticed the pool level was low so he turned on the pump and went to find the claimant to have him watch the pump. The shop was locked and there were no lights on; Mr. Whitfield unlocked the shop door and found the claimant sleeping on the floor. The noise from the door apparently woke him and Mr. Whitfield asked the claimant what he was doing and the claimant said he was sick. The incident was reported to the employer and the claimant was discharged on March 9, 2009.

The claimant filed a claim for unemployment insurance benefits effective March 22, 2009 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 disciplinary warnings within a five-month period. He knew his job was in jeopardy but after arriving at work on March 8, 2009, he promptly went to sleep on the shop floor. Since no work had been done and no lights were turned on, the claimant's actions appear intentional. The claimant's 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.

DECISION:

The unemployment insurance decision dated April 9, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. There is no overpayment as a result of this decision.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw