**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

**WADE M MATHIS**
**1025 E 14TH ST**
**DAVENPORT IA 52803**

**BRISTOL HOTEL MANAGEMENT CORP**
**C/O TALX UC EXPRESS**
**PO BOX 283**
**ST LOUIS MO 63166-=283**

**Appeal Number: 04O-UI-04934-DWT**
**OC 01/11/04 R 04**
**Claimant: Respondent (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 are 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

STATEMENT OF THE CASE:

Bristol Hotel Management Corporation (employer) appealed a representative's February 11, 2004 decision (reference 02) that concluded Wade M. Mathis (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. Initially a hearing was held on March 24, 2004. The claimant did not participate in this hearing. The employer's human resource manager testified during this hearing. Based on the testimony presented during the May 24 hearing, an administrative law judge concluded the claimant had been discharged for disqualifying reasons and disqualified him from receiving benefits. The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2004. The claimant participated in the hearing. The employer responded to the hearing notice on May 20 and provided a phone number at which to contact Devery Freeman for the hearing. At the time of the hearing, Freeman's number was the only number the employer indicated should be called. This number was called, but a recording stated the phone number had been disconnected and was no longer in service.

The claimant's testimony was taken. After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, 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.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant in October 2003 to work as an as-needed/on-call bartender. The claimant worked about five or six times or about two weeks for the employer. The last day the employer asked the claimant to work, the employer's district manager told the claimant he was no longer needed because the week before when the claimant was in charge of three bar stations the employer discovered $200.00 was missing.

During the shift in question, the night manager took all the cash from the claimant to count it so the claimant could put away everything. This was the only night there was any missing money that the claimant worked. This was also the only night the claimant did not count the money himself. The employer told the claimant the night manager denied taking any money from the claimant to count. The employer did not call the claimant back to work.

The claimant established claim for unemployment insurance benefits during the week of January 11, 2004. The employer is not one of the claimant's base period employers.

On June 3, the employer called the Appeals Section at 2:20 p.m. By this time, the hearing was closed and the claimant had been excused. The employer's representative, Deidre, indicated she had called the Appeals Section at 1:00 p.m. on June 3 to change the phone number at which to contact the employer for the hearing. The employer did not have a control number and did not receive information to contact the Appeals Section again if the employer did not receive a call for the hearing by 2:05 p.m.

After the employer requested that the hearing be reopened because the phone number recorded for the employer on May 20, 2004 was no longer valid, the administrative law judge indicated the Appeals Section clerical staff would be questioned about receiving a phone call from the employer at 1:00 p.m. The clerical staff that answers the phone for the Appeals Section logs all the calls they receive. No one received a call from the employer or a representative for the employer's at 1:00 p.m. on June 3.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The fact the employer's representative did not have a control number, did not receive information to call the Appeals Section again if the employer did not receive a call for the hearing by 2:05 p.m., and none of the clerical staff recorded a call from the employer at 1:00 p.m. indicates the employer did not call to Appeals Section as the employer's representative asserted. As a result, the employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may hold a bartender responsible for all money that is missing during a shift he works. This is a compelling business reason to discharge a claimant or never again ask him to work. There are, however, a number of plausible reasons money may be missing or a shortage results. The facts do not establish that the claimant took the money or that he conducted himself in such a way during that shift that he intentionally and substantially disregarded the employer's interests. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of January 11, 2004, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant current benefit year, the employer's account will not be charged.

DECISION:

The employer's request to reopen the hearing is denied. The representative's February 11, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 11, 2004, the

claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account will not be charged for any benefits during the claimant's current benefit year because the employer is not one of the claimant's base period employers.

dlw/b