

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

AMENDED

Appeal Number: 06A-UI-01750-HT
OC: 01/22/06 R: 04
Claimant: Respondent (2)

LEONARD J ESSEX
3807 CODY TRL
DAVENPORT IA 52804-4520

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.

HEARTLAND INNS OF AMERICA LLC
3136 BROCKWAY RD
WATERLOO IA 50701-5103

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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Heartland Inn, filed an appeal from a decision dated February 9, 2006, reference 01. The decision allowed benefits to the claimant, Leonard Essex. After due notice was issued a hearing was held by telephone conference call on March 1, 2006. The claimant participated on his own behalf. The employer participated by Director of Human Resources Jean Biesk, General Manager Susan Richards, and Assistant Head Housekeeper Millie VanRycke.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Leonard Essex was employed by Heartland Inn from December 28, 2005 until January 24, 2006. He was a full-time maintenance person and received a copy of the employee handbook at the time he was hired.

On January 20, 2006, General Manager Susan Richards asked the claimant to a punch list. This is an inventory of individual guest rooms and all of the items which needed to be replaced or repaired in that room. She had been concerned about the amount of work he was doing in a shift as it appeared he was working very slowly and not doing a full eight hours of work.

Monday, January 23, 2006, Ms. Richards found the punch list had not been submitted by Mr. Essex before he left on Friday so she went to the laundry room where he was working and asked where it was. He dropped his tools in the sink and crossed the room to confront her. He said, "Jesus Christ, woman, I'm working as hard as I can, I'm only one person." There is some dispute as to whether he said "Jesus Christ" or "Jeez, cripes" but Mr. Essex admitted to the remainder of the statement.

He had crossed the room to within five feet of the general manger, raising his voice and "getting in her face." The general manager was startled and felt threatened with him walking across the room to stand before her and challenge her in that tone of voice. Assistant Head Housekeeper Millie VanRycke was in the adjoining housekeeping office and could hear Mr. Essex's comments which were so loud she had to close the door to continue her phone conversation. She characterized his tone as "angry" and that he did cross the room to confront Ms. Richards.

The handbook provides for disciplinary action up to and including discharge for any employee who is guilty of "disrespectful, or argumentative, counter-productive communications that have the purposes or effect of unreasonably interfering with work performance, and can create an intimidating, hostile/offensive work environment."

The general manager discussed the incident with Vice President of Operations Barb Cullian and Director of Human Resources Jean Biesk on January 24, 2006. The decision was made that the claimant's conduct violated the professional ethics and workplace conduct policies. Ms. Richards discharged the claimant at the end of his shift that day.

Leonard Essex has received unemployment benefits since filing a claim with an effective date of January 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had received the employee handbook which set out the expectations of the employer regarding conduct in the workplace. It also set out the consequences to any employee who violated those provisions. While Mr. Essex's conduct on the day in question was a single incident, it is nonetheless a substantial violation of the conduct an employer has the right to expect of an employee. In addition, it is a direct violation of clearly stated policies regarding interaction between co-workers. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 9, 2006, reference 01, is reversed. Leonard Essex is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,767.00.

bgh/tjc/kjw