

**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**

**ROBERT R HUSEMANN
1708 – 7TH AVE SE #2
WILLMAR MN 56201-4894**

**KINSETH HOTEL CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-03747-CT
OC: 09/14/03 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 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 for Misconduct
Section 96.6(2) – Timeliness of Appeals
Section 96.7(2)a(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed an appeal from a statement of charges which reflected benefits paid to Robert Husemann. After due notice was issued, a hearing was held by telephone on April 26, 2004. Mr. Husemann participated personally. The employer participated by Jeremy Holke, General Manager, and Jeannette Jarvis of Employers Unity.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Husemann filed a claim for job insurance benefits effective September 14, 2003. The employer protested his entitlement on October 1 and a fact-finding interview was held. On October 10, 2003, a decision was issued allowing benefits to Mr. Husemann and a copy mailed to all parties. The employer did not receive a copy of the determination. On February 9, 2004, the employer was mailed a statement of charges for the fourth calendar quarter of 2003, which indicated benefits had been paid to Mr. Husemann. On March 9, the employer sent a letter to Workforce Development protesting the charges.

Mr. Husemann was employed by Kinseth Hotel Corporation from January 6, 1999 until September 5, 2003 as a full-time chief engineer. During the last week of August of 2003, the estranged wife of a hotel employee notified the employer that Mr. Husemann and her husband had removed hotel property and that she had the items in a storage facility. The employer went to the facility and found a 25-inch television with a serial number that matched the employer's inventory. The employer also found bar stools and other furniture items which matched those in the sleeping rooms of the hotel. When confronted about the allegation, Mr. Husemann denied any knowledge of the employee having removed the items. No criminal charges were filed against Mr. Husemann. As a result of the accusations against him, Mr. Husemann was discharged on September 5, 2003.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer filed a timely appeal as required by Iowa Code Section 96.6(2). The employer did not receive the October 10, 2003 decision allowing benefits to Mr. Husemann and, therefore, could not have filed a timely appeal by the October 20, 2003 due date. The first notice the employer received that benefits had been allowed was the statement of charges mailed on February 9, 2004. The employer had 30 days in which to appeal from the statement of charges. The appeal filed on March 9, 2004 was timely filed from the statement of charges. For the above reasons and pursuant to Iowa Code Section 96.7(2)a(6), the administrative law judge assumes jurisdiction of the separation issue.

The next issue in this matter is whether Mr. Husemann was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Husemann was discharged based on an allegation that he allowed or assisted another individual to remove hotel property without authorization. The employer's evidence consists solely of hearsay testimony and, while hearsay is admissible, the administrative law judge is not inclined to give it more weight than Mr. Husemann's sworn, credible testimony. The other employee's estranged wife was not called as a witness to verify what part, if any, Mr. Husemann played in the removal of hotel property. The employer's allegations against Mr. Husemann have not been substantiated by the evidence. For this reason, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 10, 2003, reference 02, is hereby affirmed. Mr. Husemann was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b