

**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**

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**HEARTLAND INNS OF AMERICA LLC
HEARTLAND INN
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**Appeal Number: 06A-UI-01206-H2T
OC: 01-08-06 R: 03
Claimant: Respondent (2)**

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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 30, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2006. The claimant did not participate. The employer did participate through (representative) Jean Biesk, Director of Human Resources, Dan Minard, Director of Housekeeping and Layli Springer, General Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a head housekeeper, full time, beginning August 18, 2004 through January 11, 2006 when she was discharged. The claimant was discharged for insubordination.

On the morning of January 11 the claimant spoke to Ms. Springer the general manager of the hotel and told her that she wanted to leave four rooms unclean over night. Ms. Springer told her that it was company policy that all rooms be cleaned and that no rooms were to be left unclean. Ms. Springer was away from the hotel attending a conference with Mr. Minard. When Ms. Springer checked in with the hotel at lunch time she learned that the claimant had left four rooms unclean. Ms. Springer spoke to the claimant again and repeated her instruction that all of the rooms had to be cleaned that day. The claimant said she wanted to talk to Mr. Minard about the situation, then hung up on Ms. Springer before Ms. Springer could tell her that Mr. Minard was standing right beside her. The claimant spoke to Mr. Minard who reiterated Ms. Springer's instruction that all of the rooms had to be cleaned. The claimant had adequate staff to clean the rooms. The employer believed the claimant wanted to leave work for the following day so that the cleaning crew working that day would be able to get in some significant hours of work.

When Ms. Springer arrived back at the hotel later that same afternoon two rooms remained to be cleaned. Ms. Springer saw the claimant and again told her that all of the rooms had to be cleaned. The claimant's husband was in the hotel waiting for her and accompanied the claimant up to the two rooms to help her clean them. The claimant's husband was not an employee of the hotel. When Ms. Springer discovered that the claimant's husband was working in the rooms with her, she called the claimant in the room and told her that she could not have her husband in the rooms with her as it was against company policy. Ms. Springer asked the claimant to come down to her office immediately and to have her husband wait in the lobby for her. The claimant told Ms. Springer that was "too bad" then hung up on her and did not come downstairs. The claimant's husband remained in the rooms with her. Ms. Springer attempted to call the room again, but the claimant would not answer the phone. When the claimant came downstairs, twenty or thirty minutes after Ms. Springer asked her to, she was called into Ms. Springer's office and discharged for insubordination.

Earlier in the day, the claimant had been warned by Mr. Minard that she need to follow Ms. Springer's directives. Had the claimant come downstairs to Ms. Springer's office when she was called she was going to be warned about her behavior, but not discharged. The claimant was discharged for her failure to clean the rooms after being told more than once to do so, for her failure to come to the office and speak to her direct supervisor and for having an unauthorized person in the hotel rooms with her.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant was asked to perform her normal job duties, that is to clean hotel rooms. She was specifically told to clean all the rooms yet did not do so until she was told a third time. When the employer asked her to come to the office to talk about the situation the claimant hung up the phone on her and did not report to the office as requested and instructed. The claimant's actions, in light of the explicit instructions given to her over the course of the day, constitute disqualifying misconduct. Benefits are denied.

DECISION:

The January 30, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/s