

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT C MEIER
Claimant

APPEAL NO. 09A-UI-02875-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE MANAGEMENT CO LLC
Employer

OC: 01-04-09
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 11, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 18, 2009. The claimant did participate. The employer did participate through Angie Baker, General Manager.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a night auditor/front desk clerk full time beginning February 9, 2008 through December 31, 2008 when he was discharged.

On December 27 and December 28 the claimant was using a guest room without permission during his work shift. The claimant worked nights and on December 27 and December 28 and opened up room 102 and sat in there and watched the television. When the executive housekeeper went into the room to check it on December 28 she noted that two of the chairs had been pushed together in front of the television, the remote control for the television was laying on the bed which appeared to have been laid upon and there were used tissues in the waste basket.

The claimant admitted at hearing and to general manager Ms. Baker when she questioned him that he had gone into the room away from the front desk to watch the television to check the weather when he was working. The claimant did not have permission or a work-related reason to be away from the front desk area, nor did he have permission to use a guest room. The claimant was discharged for unauthorized use of guest room and for being away from the front desk, his work area without permission.

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 § 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 claimant did not have permission to use one of the guest rooms. Whether he was able to open the drapes or not to see out into the parking lot if a guest arrives does not mean he was given permission to occupy the room. The claimant left the room in such a condition that it was obvious to the housekeeper that the room had been used. The room had to undergo additional clean up after the claimant used it so that it was ready for a guest to check into. The claimant was away from his work area in a location he had no business reason to be. The claimant knew or should have known that leaving the front desk unattended and using a guest room without permission was conduct not in the employer's best interest. The claimant's actions constitute disqualifying misconduct. Benefits are denied.

While the claimant was awarded benefits as a result of the fact-finding representative decision dated February 11, 2009, no benefits have been paid to him.

DECISION:

The February 11, 2009, reference 03, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs