

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB STAPLETON**  
Claimant

**APPEAL NO: 17A-UI-12347-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YOGI BAPA INC**  
Employer

**OC: 11/12/17**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 29, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 22, 2017. The claimant participated in the hearing. Samantha Reinier, Manager, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 6 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time front desk employee for Yogi Bapa (Quality Inn and Suites) from February 6, 2017 to November 7, 2017. He was discharged for abandoning the hotel.

During the overnight shift of November 6/November 7, 2017, a guest complained he had to wait 10 to 15 minutes to check out. The employer checked its video and first observed the claimant get in the cash drawer and withdraw what he said was \$4.00. He signed a receipt and stated it was for money he lost in the soda machine. The video did not show the claimant at the soda machine but the claimant testified he was there before it could be seen on video which only goes back about 10 minutes. The video did show the claimant get out of the passenger side of a vehicle after being away from the front desk for at least 10 minutes when the guest was waiting to check out. Employees are allowed to go outside for smoke breaks but must be able to see the front desk from where they are standing. The employer has a zero tolerance policy for abandoning the front desk and that action results in immediate termination. The employer notified the claimant his employment was terminated November 7, 2017.

On April 3, 2017, the claimant received a written warning for fraternizing with a guest in violation of the employer's policy after he gave a guest his phone number (Employer's Exhibit 2). On September 20, 2017, the claimant received a written warning for sexual harassment after he

called a co-worker while both were at work and asked her to take off her clothes (Employer's Exhibits 3 and 5).

### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant could not see the front desk when he went outside the night of November 6/November 7, 2017, and left the hotel unattended. Consequently, a guest had to

wait at least 10 minutes to check out. While the employer's policy allows employees to go outside, they must be able to see the front desk at all times so they do not miss a guest and possibly lose that business. The employer's policy is not unreasonable. The claimant's actions in being outside without being able to see the front desk was unacceptable and inappropriate.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The November 29, 2017, reference 01, decision is affirmed. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs