

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK SCHOLTES

Claimant

APPEAL NO: 09A-UI-04867-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 02/15/09

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Mark Scholtes (claimant) appealed an unemployment insurance decision dated March 17, 2009, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Kinseth Hotel Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2009. The claimant participated in the hearing. The employer participated through Adam Larson, Bookkeeper; Debby Pregler, Assistant Executive Housekeeper; and employer representative Cynthia Knobel. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time housekeeper from August 27, 2008 through October 13, 2008 when he was discharged. The employer's disciplinary policy provides that disregard of employer's policies and practices could lead to disciplinary action including formal written warnings, suspension, probation and discharge. The claimant went through orientation and was advised of the requirements of cleaning a hotel room. The employer allows 30 minutes for an employee to clean a hotel room and the claimant was repeatedly taking less time to clean his rooms. The executive housekeeper suspected the claimant was not changing the sheets in his rooms. On October 7, 2008 she marked the sheets in three of the claimant's rooms. The executive housekeeper put a product called "Wite-Out" on the sheets' tags. This product washes out when the sheets are laundered so there is no possibility the product could be there from a previous incident.

The claimant documented that the rooms were cleaned but the executive housekeeper went into the rooms the claimant had cleaned and found three of them did not have clean sheets. The rooms were 312, 313 and 315. If another employee helps cleans a room that employee is

supposed to document the help and no one had assisted the claimant in cleaning these three rooms. The claimant was discharged on October 13, 2008. He never admitted not changing the sheets but did say that, "Others were also not changing the sheets" and he felt that he was being "singled out."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for not changing the bed sheets in three hotel rooms on October 7, 2008. The executive housekeeper previously suspected the claimant of not changing the sheets in the rooms he cleaned because of how quickly he cleaned his rooms. A hotel is required to keep its rooms in sanitary conditions and failure to do so could result in a loss of business or the failure of the business itself. The claimant knew what was required and the fact that he failed to change the sheets in three different rooms makes the violations more than an isolated incident.

The claimant contends he received no warnings before discharge but a health code violation is serious enough that a warning is not provided when violations are discovered. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 17, 2009, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs