

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M BURCH
Claimant

APPEAL NO. 07A-UI-10197-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO & GOLF RESORT
Employer

**OC: 10/07/07 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Riverside Casino & Golf Resort (Riverside), filed an appeal from a decision dated October 31, 2007, reference 01. The decision allowed benefits to the claimant, Christine Burch. After due notice was issued a hearing was held by telephone conference call on November 20, 2007. The claimant participated on her own behalf. The employer participated by Human Resources Business Partner Kris Bridges and Beverage Manager Dan Kraus.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Christine Burch was employed by Riverside from August 7, 2006 until September 28, 2007, as a full-time bartender. On September 25, 2007, another bartender, Josh Wajba, reported to Food and Beverage Manager Kelly Knake that Ms. Burch had served a customer a beer and put the money in her tip jar rather than the register.

The security surveillance camera confirmed the claimant had put the money in her tip jar and she was interviewed by Ms. Knake and the department of criminal investigation. She explained that a round of beer for three people had been ordered some time before and that one of the three did not want his beer right at that time so she held it back for him. Just before she left at the end of her shift this third person reminded her he had that one beer coming and she served it to him. When he handed her \$2.00, she put it in her tip jar because the cost of a beer is \$3.00.

The surveillance tape was viewed again for the entire hour before the end of Ms. Burch's shift. Two rounds of three beers each were purchased and served during that time with no drinks left unserved. After viewing the tape again with several members of management, Ms. Knake contacted the claimant by phone and told her she was fired.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was accused of theft but not allowed to view the surveillance tape which is the sole evidence against her. The best information the employer was willing to provide was the testimony of one of the managers who viewed the tape. The claimant denies taking the \$2.00 for a \$3.00 beer and converting it to her own use by putting it in the tip jar. The administrative law judge does not find the employer's testimony to be any more or less credible than the claimant's, but with a discharge the employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The evidence being equal the administrative law judge concludes the employer had not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of October 31, 2007, reference 01, is affirmed. Christine Burch is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs