

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

DOUGLAS A THELEN
1411 W 29TH ST
DAVENPORT IA 52804

ISLE OF CAPRI-BETTENDORF
1777 ISLE PARKWAY
BETTENDORF IA 52722

Appeal Number: 04A-UI-05942-S2T
OC: 05/02/04 R: 04
Claimant: Appellant (1)

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 for Misconduct

STATEMENT OF THE CASE:

Douglas Thelen (claimant) appealed a representative's May 18, 2004 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with I.O.C. Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 24, 2004. The claimant participated personally and through Jodee Radosevich, former employee. The employer participated by Lynne Banks, Human Resources Manager; and Harold Mire, Table Games Manager.

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 hired on August 12, 1997, and at the end of his employment he was working as a full-time floor supervisor. The claimant signed for receipt of the employer's handbook on October 22, 2002, but indicated he did so without requesting a copy of the handbook. The claimant received a written warning on March 21, 2003, for allowing guests to past post bets in violation of company rules. On October 10, 2003, the employer issued the claimant a written warning for telling the employer he needed time off for illness when he told co-workers he wanted time off to attend a party. The claimant received a written warning on April 12, 2004, for supervising a dealer who allowed guests to place bets, which were over the maximum allowed on numerous spins.

As part of the claimant's duties he was to complete a money drop as specified by internal controls. Together with two members of security, the claimant was to collect a cart with empty boxes, remove boxes of cash from games, put the cash boxes on the cart, place the empty boxes in the games, secure the cash boxes on the cart and return the cart to the holding room. On April 23, 2004, the claimant pulled all but one box containing money from the games when he left to move a refrigerator. The claimant returned to the cart after moving the refrigerator. He and security took the cart to the holding area.

The employer terminated the claimant on April 26, 2004, for leaving the employer's assets without completing his duties in violation of company procedures.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions and protect the employer's assets. The claimant disregarded the employer's right by failing to follow instructions and protect the employer's assets. The claimant's disregard of the employer's interests after having received warnings is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 18, 2004 decision (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 has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjf