

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS R GRIFFIS**  
Claimant

**SAC & FOX TRIBE  
MESKWAKI BINGO CASINO & HOTEL**  
Employer

**APPEAL NO: 10A-UI-05059-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/28/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 22, 2010, reference 01, that held he was discharged for misconduct on February 25, 2010, and benefits are denied. A telephone hearing was held on May 17, 2010. The claimant participated. Thomas Swartz, HR Director, and John Tully, Beverage/Concessions Manager, participated for the employer. Employer Exhibit One, pages 3 – 27, was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time bartender on January 23, 2008, and last worked for the employer on February 23, 2010. The claimant received an employee handbook that contained the policies of the employer. The claimant knew that theft of company property was a termination offense. The claimant also knew the cash handling policies of the employer due to discipline, and an October 2, 2009 memo.

The claimant's supervisor reported there was a cash shortage during claimant's work shift on February 23, and she permitted the claimant to take money from her personal tips to balance his drawer. The supervisor's report caused the surveillance department to review a security video of the claimant's work activity. Surveillance issued a written report that the claimant: 1) removed money from his drawer without a supervisor present, and 2) put it in his tip box; and, 3) using his tip money to balance the cash drawer.

The claimant had been issued written discipline for violating the cash handling policies of the employer on November 14, 2009, December 30, 2009 and January 15, 2010. The employer discharged the claimant on February 25 for theft and violating cash handling policies due to the

recent incident in light of prior discipline. The employer disciplined his supervisor for allowing the claimant to use his personal tips to balance the cash drawer. Claimant lost his appeal to save his job.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on February 25, 2010, for repeated violations of its cash handling policies.

The claimant knew the employer cash handling policy due to prior warnings and the October 2 memo, and his repeated violation for the same offense constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated March 22, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on February 25, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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