

**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**

**CORINA L CAVEN
1525 W 14TH ST
DAVENPORT IA 52804**

**IOC SERVICES LLC
B1
1641 POPPS FERRY ROAD
BILOXI MS 39532-2226**

**Appeal Number: 04A-UI-10440-HT
OC: 08/29/04 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

STATEMENT OF THE CASE:

The claimant, Corina Caven, filed an appeal from a decision dated September 16, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 18, 2004. The claimant participated on her own behalf. The employer, IOC Services, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Corina Caven was employed by IOC from October 5,

1999 until August 31, 2004. She was a full-time slot attendant. On August 8, 2004, she received her sixth warning since January 19, 2004. The warnings were for various infractions ranging from attendance problems to paying out an incorrect amount to a jackpot winner. She was advised her job was in jeopardy.

On August 31, 2004, the claimant was smoking in a guest restroom which is a violation of company policy. The policy prohibits staff from smoking in the guest rooms, the hallways or in sight of any guests. Employees have a break room where smoking is permitted. She was discharged by Human Resources Manager Linn Banks for a final violation of company rules and policies.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had been advised her job was in jeopardy as a result of violation of various company rules. In spite of the warnings the claimant chose to knowingly violate the no-smoking prohibition and smoke a cigarette in a restroom used by guests. The claimant offered no explanation for willfully violating a known policy other than that she believed other employees had done the same thing and had not been discharged. This is not a good reason for violating company policy, especially as Ms. Caven had received a number of warnings prior to the final incident and this violation of the rules was not an isolated incident. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of September 16, 2004, reference 01, is affirmed. Corina Caven is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/s