

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE F WIEDERHOLT
Claimant

APPEAL NO. 13A-UI-00729-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MYSTIQUE CASINO
DUBUQUE RACING ASSOCIATION LTD**
Employer

**OC: 12/02/12
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Mystique Casino filed an appeal from a representative's decision dated December 24, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was conducted on February 20, 2013 and re-convened and completed on April 3, 2013. Mr. Wiederholt participated personally. Participating as witnesses for the employer were Ms. Tami Schnee and Ms. Tami Konzett. Employer's Exhibits 1 through 15 were received into evidence.

ISSUE:

The issue is whether the employer's appeal was timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mystique Casino's appeal in this matter is considered timely. The adjudicator's determination dated December 24, 2012, reference 01, was not received by the employer at its address of record. Subsequently, the employer investigated as to why a decision had not been issued. Upon being apprised that a decision had previously been issued but not received by the casino, the employer immediately filed an appeal in this matter. The delay in filing the appeal was through no fault of the employer. The appeal is considered timely.

Dale Wiederholt began employment with Mystique Casino on April 20, 2000. Mr. Wiederholt was employed as a full-time cage jackpot sales cashier and was employed on a full-time basis. Mr. Wiederholt was paid by the hour. Tami Konzett is the cage/cashier director. Mr. Wiederholt's employment with Mystique Casino came to an end on December 3, 2012 when he was discharged for violation of company policy.

Mr. Wiederholt was discharged following an investigation that concluded that Mr. Wiederholt had violated casino policy by accessing and changing a W-2g tax form in the company's computer system. Mr. Wiederholt had noted that another employee had apparently made an error by placing the middle initial of a jackpot winner's name in the wrong field of the W-2g form that the player had signed at the time the winnings were transferred to that individual by Mystique Casino. The claimant had accessed a company computer screen and noted that the initial appeared to have been entered in the wrong field. Mr. Wiederholt considered his action to be a "correction" of another employee's error and believed it would facilitate the casino in accessing the W-2g form at a later date.

The employer became aware of the incident approximately two months later and immediately investigated. Casino policy specifically prohibits cage employees from implementing any corrections, changes or alterations of casino documentation and requires that all such corrections, alterations or changes be done only by supervisory personnel with the authority and access to do so. When questioned about the matter, Mr. Wiederholt initially issued a denial. Subsequently, the claimant demonstrated to Ms. Conzett the technique of operation he used to allow him to make the change/correction without using a supervisor to accomplish it.

The employer considered Mr. Wiederholt's actions to be a serious violation of casino policy not only because it was a violation of company rules but also because the organization was required to submit electronic copies of the W-2g forms to the IRS and IRS regulations required that the document not be different from the original paper copy that was created and signed by the taxpayer.

A decision was made to escalate to discharge because Mr. Wiederholt had been repeatedly warned and suspended for violation of cage/cashier policies. The claimant was on a final warning from the company for violation of cage policies at the time that the most recent incident came to the attention of the casino and had been previously warned and suspended for similar conduct. The employer concluded that Mr. Wiederholt had again violated policy and the scope of his authority by making the changes in question on or about October 7, 2012 within five days of his return to work after being suspended for a similar violation of casino policies.

It is Mr. Wiederholt's position that his actions were not misconduct but were done for the benefit of the casino. Mr. Wiederholt considers his change to the W-2g document to be a "correction" and not an alteration or change.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that Mystique Casino has a strict cashier/cage policy which prohibits hourly employees from implementing any change, alteration, correction or other manipulation of Mystique Casino's documents including W-2g forms that are kept in the course of Mystique Casino's business operations. The employer believed that their computer system was designed so that hourly employees could not violate the rule. When it was determined that a change had been implemented on a tax form of a player who had won a jackpot, the casino investigated. Mr. Wiederholt initially denied any involvement but later cooperated and showed the cage director the technique he had used to change the location of a middle initial of a player in company records. The company considered the matter to be of a serious nature warranting discharge because Mr. Wiederholt had repeatedly in the past been warned and suspended for not following the rules and procedures required of cage department employees.

The company determined that Mr. Wiederholt had not initially created the W-2g form, and therefore, was not attempting to correct his own error and concluded the claimant was correcting an error of another employee and altering tax documents without the knowledge or consent of his supervisor or the cage department director. The matter was considered to be serious because the alteration of the tax document subjected the casino to administrative penalties from the IRS as the casino is required to electronically transmit copies of the W-2g form in the same form as it was created and signed by the taxpayer in its paper form. Based upon the claimant's repeated violation of cage policies and the most recent violation after previously being warned and suspended for similar conduct, the claimant was discharged from employment.

The administrative law judge is cognizant that Mr. Wiederholt's position is that he made a "correction" and not an "alteration" on the document. While the claimant's intentions at the time may have been good, they nevertheless were in violation of a known company rule and based upon his previous warnings, Mr. Wiederholt knew or should have known that any further violation of casino policies would jeopardize his employment. The administrative law judge finds the claimant's position that a correction on an official document is not a change in the document strains credibility. The administrative law judge concludes that Mr. Wiederholt knew the rule but disregarded it.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated December 24, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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