

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN PURK**  
Claimant

**APPEAL NO. 13A-UI-11951-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAC & FOX TRIBE**  
Employer

**OC: 09/22/13**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, John Purk, filed an appeal from a decision dated October 14, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 18, 2013, and concluded on January 8, 2014. The claimant participated on his own behalf and was represented by Melissa Nine. The employer, Sac & Fox Tribe, participated by Controller Tom Martin, Accounting Team Leader Caleb Troxell, Finance Director Chris Ledgerwood, and Human Resources Director Lucy Roberts. Caleb Troxell did not participate in the January 8, 2014, hearing due to illness.

**ISSUE:**

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

**FINDINGS OF FACT:**

John Purk was employed by Sac and Fox Tribe from December 15, 1993 until September 23, 2013 as a full-time drop count room supervisor. On September 19, 2013, the surveillance department and gaming commission representative told Controller Tom Martin something had occurred in the count room on September 18 and 19, 2013, which warranted investigation.

The security department conducted interviews of Mr. Purk, and team members Amy Oderwald and Kelly Buckley. On those two days money was found in venue machines and the team member and Mr. Purk agreed to state the money had been found on the floor. The counting room staff had been advised in staff meetings they must open the venue machines to make sure no money had become “stuck” after the count for each venue was finished. This was important because the source of the money had to be determined, such as food, gaming or gift shop. In addition, since the counts were “blind,” that is, the counting room does not know in advance how much money should be there.

On September 18, 2013, a \$100.00 bill was found on the floor of the counting room. It could not be ascertained from which venue it had come so when Mr. Purk turned in the count that day he

also filled out the necessary paperwork to indicate the money could not be attributed to a specific venue.

On September 19, 2013, Kelly Buckley summoned Mr. Purk to her saying there was a \$10.00 bill she was going to say she had found on the floor. The money had come out of a machine and Mr. Purk knew which venue had just been counted and knew where to attribute it. The paperwork was done appropriately. Mr. Purk told Ms. Buckley the counting room had surveillance cameras and security would know from where the money had come.

After the incident on September 19, 2013, Mr. Purk mentioned to Account Team Leader Caleb Troxell that Ms. Buckley had “pulled money of a machine” and was going to report it as having been on the floor. Mr. Troxell notified Mr. Martin of this the next day after he learned of the investigation.

This accounting for the source of money is required by the Iowa Racing and Gaming Commission. In addition, it is critical to determine the source of the money because if another employee’s cash drawer would come up short and that employee could potentially lose his or her 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.

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 claimant has denied "misrepresenting" where the money was found. He filled out the proper paperwork for the \$100.00 on September 18, 2013, and knew the venue to be credited with the \$10.00 bill on September 19, 2013.

The employer has failed to provide any firm evidence the claimant knowingly misrepresented anything. It did not dispute the proper paper was filled out for the \$100.00 and while Ms. Buckley may have been intending to misrepresent where she had found the money, the reports submitted did not do so.

The administrative law judge considers the employer has failed to meet its burden of proof to show by a preponderance of the evidence the claimant is guilty of willfully and deliberately violating the employer's policies or acting contrary to the employer's best interests. Disqualification may not be imposed.

**DECISION:**

The representative's decision of October 14, 2013, reference 01, is reversed. John Purk is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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