

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARLENE M MEYER
Claimant

APPEAL NO. 12A-UI-03595-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

**OC: 09/11/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated March 30, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 24, 2012. Claimant participated. Participating as a witness was Phillis Simpson, Former Supervisor. The employer participated by Ms. Lou Brown. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue is 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: Arlene Meyer was employed by the captioned casino hotel from March 11, 2009 until February 29, 2012 when the claimant was discharged from employment. Ms. Meyer worked as a full-time laundry worker and was paid by the hour. Her immediate supervisor was Jody Thomas.

A decision was made to terminate Ms. Meyer from her employment with the Meskwaki Bingo Casino & Hotel based upon ongoing issues between Ms. Meyer and her fellow employees. The claimant had gone to the employer's personnel department and the employee assistance program on numerous occasions to complain about other workers. The employer repeatedly met with laundry workers to warn all the employees in the department to work cooperatively and to minimize harassment or distraction of other workers.

Based upon the repetitive nature of Ms. Meyer's complaints about other workers, the employer began to conclude that Ms. Meyer was hypersensitive and that the claimant's demeanor was the cause of some of the dissension in the work area.

It appears because of the claimant's hypersensitivity to the conduct of her other workers and her repeated complaints, the employer began to discount some of the claimant's complaints that

were justified. When the claimant continued to make complaints although she had been counseled to get along, a decision was made to terminate Ms. Meyer from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer provides insufficient evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the testimony is highly disputed. The administrative law judge concludes based upon the totality of the evidence in the record that Ms. Meyer was discharged based upon repeated complaints about the conduct of other employees. The claimant's repetitive complaints caused the employer to repetitively investigate the complaints and to meet with employees in an effort to make employees of the facility's laundry department work cooperatively.

Because of the repetitive nature of Ms. Meyer's complaints, it appears that the employer began to discount her complaints because some previous complaints were determined to be unfounded. It appears that at the end of employment the claimant's complaint about the conduct of other employees was justified but that the claimant had exhausted the employer's ability and willingness to continue to investigate repetitive complaints. A management decision was therefore made to terminate Ms. Meyer from her employment for the good of the business.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Meyer was undoubtedly a sound decision from a management viewpoint, intentional, disqualifying misconduct at the time of separation has not been established. Benefits are, therefore, allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 30, 2012, reference 02, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs