

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON W EHRIG
Claimant

APPEAL NO. 10A-UI-01720-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE
Employer

**Original Claim: 12/20/09
Claimant: Appellant (1)**

Section 96.5-2-a – Suspension

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 25, 2010, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on March 4, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Thomas Swartz participated in the hearing on behalf of the employer. Exhibits 1-4 were admitted into evidence at the hearing.

ISSUE:

Was the claimant suspended for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for employer from November 21, 1997, to December 15, 2009. He was informed and understood that under the employer's work rules, he was required to maintain his gaming license in order to remain employed and would be suspended immediately if his gaming license was suspended.

The gaming commission suspended the claimant's gaming license on December 14, 2009, because he had been arrested on December 13 on a felony Operating a Vehicle While Intoxicated – Third Offense, which was an offense committed while the claimant was off duty in his personal vehicle. As a result of the suspension, he was immediately suspended from employment per the employer's policy.

The claimant ended up pleading guilty to a reduced offense of Operating a Vehicle While Intoxicated Second Offense, which is not a felony.

The gaming commission reinstated the claimant's gaming license effective January 11, 2010, based on the conviction being a misdemeanor not a felony. The claimant was allowed to return to work on January 12, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was suspended for work-connected misconduct as defined by the unemployment insurance law. Under the rules, when a claimant is suspended, a determination must be made as to whether the suspension was for work-connected misconduct. 871 IAC 24.32(9).

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Whether the offense was a felony or misdemeanor, the claimant's conduct in driving while intoxicated that led to his license being denied was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant knew that his off-duty conduct could affect his gaming license and, in turn, his employment.

DECISION:

The unemployment insurance decision dated January 25, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw