

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THELMA R BULLARD
Claimant

APPEAL NO. 09A-UI-18821-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

**OC: 11/15/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 8, 2009, reference 01, which denied benefits based upon her separation from Meskwaki Bingo Casino & Hotel. After due notice, a telephone conference hearing was held on January 28, 2010. Claimant participated personally. The employer participated by Mr. Thomas Swartz, Human Resource Director, and Ms. Elke Davenport, Housekeeping Department Manager.

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 the evidence in the record, the administrative law judge finds: Thelma Bullard was employed by Meskwaki Bingo Casino & Hotel from May 6, 2004 until November 17, 2009 when she was discharged for failure to follow reasonable work-related directives. She worked in the housekeeping department and was paid by the hour. Her immediate supervisor was Elke Davenport.

Ms. Bullard was discharged after company management determined that she failed to follow a reasonable and work-related directive that had been given to her regarding Jerry Koster, a graveyard porter who had been placed on medical limitations by his physician. Ms. Bullard and an Assistant Supervisor Deron, had been instructed and reminded by e:mail that Mr. Koster was to be assigned only to light duty sit-down work in the facility's laundry due to his limitations.

Subsequently it was determined that both Ms. Bullard and Mr. Deron had not followed those directives. Ms. Bullard was not assigned to work on October 26 or 27, 2009 when Mr. Deron violated the directive. Ms. Bullard, however, allowed Mr. Koster to work in other areas including the casino's bingo facility during the graveyard shift upon her return on October 28, 2009.

The employer considered the claimant's failure to follow the work instruction to be a serious matter as Mr. Koster had been allowed to resume performing duties of the kind that had initially caused his work injury.

Ms. Bullard was aware of the directive to assign Mr. Koster to light duty sit-down work in the laundry but not enforce it. When Ms. Bullard observed Mr. Koster in a different area of the casino performing the more strenuous duties, she recognized the violation of the work directive but did not enforce it.

Ms. Bullard had previously been specifically instructed to call security if an employee would not follow her directives and did not do so in this instance, however, believing that Mr. Koster "preferred" to be working in the bingo area.

The employer began investigating the matter as soon as it was brought to the attention of management on approximately November 12, 2009 and discharged Ms. Bullard following the investigation. A decision was made to terminate Ms. Bullard because she had been previously warned for failure to work instructions and what the employer considered to be insubordinate conduct. Mr. Deron was not discharged but placed on a warning status as he had not previously been warned for conduct of this nature.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for disqualifying reasons. 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.

In this case the employer had a reasonable expectation that supervisory personnel would follow and adhere to reasonable work-related directives that had been issued to them. The evidence in the record establishes that Ms. Bullard was aware of the directive that Mr. Koster be assigned only to work in the casino's laundry area and that Mr. Koster was only to perform sit-down work of a very light nature. The claimant had also been reminded of the directive by an e:mail that had been sent to her by her supervisor, Ms. Davenport. Although aware of the employer's directive and the employer's expectations, Ms. Bullard allowed Mr. Koster who had returned to work with light duty restrictions to work in other areas of the casino performing work of the nature that had previously caused his injury. Ms. Bullard recognized that Mr. Koster was not in the area assigned and not performing the duties assigned and questioned Mr. Koster but did not enforce the directive that had been given to her by management. Ms. Bullard did not call security as previously instructed but instead allowed Mr. Koster to, in effect, work as he pleased through the remainder of the night.

Because the claimant had previously been warned for failing to follow directives and her failure to be subordinate to management directives, a decision was made to terminate Ms. Bullard from her employment. The claimant had notice of the employer's expectations and opportunity to follow them but chose not to do so. Benefits are withheld.

DECISION:

The representative's decision dated December 8, 2009, reference 01, is affirmed. The 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 her weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs