

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY L BROWN
Claimant

APPEAL NO. 10A-UI-02424-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT
LLC/RIVERSIDE C&GR ATN: DAN FRANZ**
Employer

**OC: 01/17/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated February 9, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on April 5, 2010. Claimant participated personally. The employer participated by Trisha Murphy, Human Resource Partner and Mike Bose, Table Game Supervisor.

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: Claimant was employed as a full-time table game dealer for Riverside Casino from September 22, 2008 until January 19, 2010 when he was discharged from employment.

Mr. Brown was discharged when he exceeded the permissible number of attendance infraction points by being assessed two points for failing to report for a scheduled shift on a weekend. Under the company's "no fault" attendance policy, employees are subject to receiving attendance infraction points for failing to report for work. Employees receive two points for missing weekend days and one point for missing work during non weekend days. The claimant was aware of the point policy and had been warned in the past.

The claimant was assessed attendance infraction points for a scheduled work day January 17, 2010 because a table games supervisor had not "signed off" on Mr. Brown's request to trade work days with another employee.

Mr. Brown had followed company policy by finding a replacement for January 17, 2010 and a replacement had reported to work in Mr. Brown's place. Because the claimant had not received

a written authorization, he was deemed to have not reported for scheduled work and was discharged.

In seeking to obtain permission to switch with another table dealer, Mr. Brown had gone to "Doug" a table games supervisor. Mr. Brown showed the supervisor his application for change and inquired as to whether the application would be approved. The supervisor replied: "I do not see why not." Mr. Brown thus believed that his application would be formally approved. The claimant was discharged when he reported for his next scheduled shift on January 19, 2010.

It is the employer's position that obtaining verbal consent is not sufficient because the supervisor must review the application to insure that the replacement worker possesses all the necessary games skills before approving each request.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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 the denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant a 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).

In the case at hand, the claimant was reasonable in his belief that his request to substitute another worker would be approved based upon the table games supervisor's statements. Mr. Brown believed that the substitute dealer possessed all the same card game skills that Mr. Brown possessed and the claimant did not foresee that the approval would be declined based upon the circumstances and the statement made to him by the supervisor at the time.

The question before the administrative law judge is not whether Riverside Casino has the right to discharge Mr. Brown for these reasons. The question is whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, providing Mr. Brown is otherwise eligible.

DECISION:

The representative's decision dated February 9, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs