

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SHAWN C WARTH  
806 S 5<sup>TH</sup> ST  
BURLINGTON IA 52601

CATFISH BEND CASINOS LC  
PO BOX 471  
FORT MADISON IA 52627-0471

Appeal Number: 05A-UI-11293-HT  
OC: 10/16/05 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Shawn Warth, filed an appeal from a decision dated October 28, 2005, 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 17, 2005. The claimant participated on his own behalf and was represented by Brian Sholbe. The employer, Catfish Bend Casino, participated by Human Resources Director Steve Morley. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shawn Warth was employed by Catfish Bend Casino from March 31, 1997 until October 8, 2005. He was a full-time senior deck hand.

The claimant was aware of the employer's policy which requires employees to turn in any money found in the casino. The money is to be given to the vault, no matter where it is found on the casino property or the amount.

On October 8, 2005, the claimant was observed by a DCI agent sweeping a \$5.00 bill into the dust pan he was using to clean the slot area. He then took the dust pan to the bow thruster room where there were no cameras, and put the money in his pocket. The DCI agent confronted him about the incident and he admitted to taking the money. To the DCI agent he stated he was "running low on cash" and at the appeal hearing he said he had been "having a bad week."

The employer discharged the claimant for violation of the company policy regarding found money.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was aware of the company policy which required all found money to be given to the vault. There is no question but that the claimant intended to keep the money because he went to some lengths to conceal his actions when he went to the bow thruster room to take the money from the dust pan and put it in his pocket. Whether or not this constitutes theft under the criminal statutes, it is a violation of a known company rule. As the employer has established all found money belongs to the vault, the claimant's conduct constitutes theft from the employer. This is conduct not in the best interests of the employer and the claimant is disqualified.

#### DECISION:

The representative's decision of October 28, 2005, reference 01, is affirmed. Shawn Warth is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc