

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN B TILLINGHAST
Claimant

APPEAL NO. 08A-UI-11159-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO & GOLF RESORT
Employer

**OC: 11/02/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Riverside Casino & Golf Resort filed a timely appeal from an unemployment insurance decision dated November 21, 2008, reference 01, that allowed benefits to Karen B. Tillinghast. After due notice was issued, a telephone hearing was held December 12, 2008 with Ms. Tillinghast participating. Tim Donovan and Dan Franz participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Karen B. Tillinghast was employed by Riverside Casino & Golf Resort from August 7, 2006 until she was discharged October 31, 2008. She last worked as a cage cashier.

On October 30, 2008, Ms. Tillinghast took a company-issued coat belonging to another employee. Ms. Tillinghast had a similar coat. She realized the coat was not hers before she left the company parking lot. She did not return it that night but did return it on the following day.

By that time, the owner of the coat had reported its disappearance. Surveillance video established that Ms. Tillinghast had left with the jacket and that she had also returned it. She was discharged for this single event.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. 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 definition of misconduct exempts isolated instances of poor judgment or poor performance. The administrative law judge concludes from the testimony of the witnesses that Ms. Tillinghast did not realize that the jacket belonged to another at the time that she took it from the coat rack. She could have returned the coat before leaving the parking lot but did not do so. That failure was poor judgment, and it cost Ms. Tillinghast her job. Nevertheless, the evidence establishes that she returned the coat on the following day before being confronted about the incident. While the incident justifies discharge, it does not justify disqualification for benefits because the claimant promptly returned the jacket.

DECISION:

The unemployment insurance decision dated November 21, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs