

**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**

**CARL ROBINSON
806 – 26TH ½ AVE
ROCK ISLAND IL 61201**

**IOC SERVICES LLC
1641 POPPS FERRY ROAD BI
BILOXI MS 39532-2226**

**Appeal Number: 05A-UI-04418-ET
OC: 04-03-05 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 20, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 16, 2005. The claimant participated in the hearing. Jason True, Human Resources Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time house-person for Isle of Capri Casino from December 23, 2002 to April 4, 2005. On March 31, 2005, a department manager reported the claimant

ordered a meal from the grill without paying for it on March 30, 2005. Employees are required to enter their employee identification number into a Kronos time clock system when purchasing food from the employer and the amount of the bill is deducted from the employee's check. After reviewing surveillance tapes of March 30, 2005, the employer determined the claimant had not been at the Kronos clock at any time that day and had not paid for his food. The claimant stated he shared a meal with co-worker Anthony Powell but the surveillance tape showed the claimant go to the grill and order a patty melt and fries and Mr. Powell also picking up a separate order for which there was no record of him paying. When confronted about the situation the claimant denied ordering his own food without paying for it March 30, 2005, but stated he had only paid for approximately five meals since the Kronos system was implemented by the employer around the end of January 2005. The employer reviewed the Kronos system records and learned the claimant had not paid for any meals although the tapes did show him at the clock on occasion. The claimant admitted that when he did use the Kronos system he used random numbers rather than his own. The employer terminated the claimant's employment and he was prosecuted for fifth degree theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant admitted that he entered random employee numbers into the Kronos system rather than use his own number to pay for meals and although he stated he paid for approximately five meals during the time the system was in place there were no deductions from his time card for food purchased. While the claimant may not have entered a random number March 30, 2005, the evidence establishes he ordered a meal without paying for it. The claimant's actions March 30, 2005, were not an isolated incident and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 20, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/s