

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBEY A GEORGE

Claimant

APPEAL NO. 10A-UI-04099-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO & GOLF RESORT

Employer

OC: 02/14/10

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Riverside Casino & Golf Resort (Riverside) filed an appeal from a representative's decision dated March 9, 2010, reference 01, which held that no disqualification would be imposed regarding Abbey George's separation from employment. After due notice was issued, a hearing was held by telephone on April 29, 2010. Ms. George participated personally. The employer participated by Trisha Murphy, Human Resources Business Partner, Mike Bose, Pit Manager; and Jerrod Draisey, Dual Rate Supervisor. Exhibits One through Nine were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. George was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. George was employed by Riverside from August 15, 2006 until February 15, 2010. She was last employed full time as a dealer. She was discharged as a result of conduct that occurred on February 14, 2010.

Ms. George was scheduled to get off work at 12:00 midnight on February 14. Shortly after midnight, she called over a supervisor, Jerrod Draisey, and asked him to contact her supervisor to send someone to replace her because she was not staying over. When Mr. Draisey told Ms. George that her supervisor said she was going to have to stay over, she responded by saying, "This is fucking bullshit, I am not staying over." The comment was made in a loud voice and in the presence of casino guests. She was told they were working on finding someone to replace her on the game she was dealing.

Approximately five minutes later, Ms. George called Mr. Draisey back over. She told him to tell them she was not going to deal another "fucking" card unit they sent her the "fuck" home. There were patrons playing the game she was dealing at the time. According to video surveillance, she stopped dealing at 12:12:48 and did not resume until 12:14:03. As a result of her combined actions, Ms. George was discharged on February 15, 2010.

Ms. George filed a claim for job insurance benefits effective February 14, 2010. She has received a total of \$5,432.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Ms. George's repeated use of profanity in front of casino guests was clearly contrary to the employer's policies and the standards of behavior the employer had the right to expect.

The administrative law judge appreciates that Ms. George was upset and angry because she was unable to leave work on time. However, this was not justification for subjecting patrons to repeated profanity. She compounded the problem when she refused to perform her duties. She stopped dealing as a means of forcing the employer to send her home. She put her own agenda ahead of the patrons' interest in continuing the game she was supposed to be dealing. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

Ms. George has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated March 9, 2010, reference 01, is hereby reversed. Ms. George was discharged by Riverside for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. George will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css