

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time food server from November 25, 2002 through August 7, 2005. The employer offers coupons or complimentary tickets for its better customers. The customers are not allowed to use more than one coupon or ticket at one time. A guest named Tammy received a \$20.00 coupon in the mail and she was also given a \$50.00 comp ticket when she was present in the casino one day. She went through the buffet and her bill was \$53.91. Tammy presented both the \$50.00 ticket and the \$20.00 coupon to the claimant and said that she could keep the change. Employees are not allowed to keep the change from a coupon or ticket as gratuity.

The auditing process the next day flagged the transactions. The employer's records show Tammy used her \$50.00 comp ticket and paid \$3.91 in cash at 8:50 a.m. The \$20.00 coupon was used at 10:26 a.m. for an amount of \$23.05. Tammy stated that she was not at the casino at 10:26 a.m. The claimant is the employee who was responsible for the transactions and the employer discharged her believing she was responsible for theft.

The claimant does not remember the transactions but offered an explanation that she was not as concerned about turning in the comp tickets as she was with providing good customer service to the patrons. She denied intentionally splitting up the comp ticket and the coupon. She denied misappropriating the employer's funds and reported that she usually had a large section of tables since she was one of the better servers. No warnings of a similar nature had been issued to the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for misappropriation of the employer's funds. Although the employer's records may show an inconsistency or an inaccuracy, the claimant offered a reasonable explanation for her conduct. If she were busy and tending to customer's needs as opposed to turning in her coupons, a mistake could have been made. Under the circumstances of this case, the claimant's actions were at worst the result of unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated September 1, 2005, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/kjw