

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES L MORRISSEY**  
Claimant

**R C CASINO LLC**  
Employer

**APPEAL 21A-UI-16892-CS-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/25/21**  
**Claimant: Respondent (1)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

On August 2, 2021, the employer/appellant filed an appeal from the July 23, 2021, (reference 01) unemployment insurance decision that allowed benefits based on claimant being discharged for not willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2021. Claimant participated at the hearing. Employer participated through Human Resources Business Partner, Courtney Remley. Administrative notice was taken of the claimant's unemployment benefits records.

**ISSUES:**

Was the separation a discharge for job-related misconduct that disqualifies claimant from unemployment insurance benefits?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

Is the claimant eligible for FPUC?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 26, 2016. Claimant last worked as a full-time dealer. Claimant was separated from employment on April 28, 2021, when he was discharged.

On April 22, 2021, claimant was a black jack dealer for the employer. Claimant was observed by his manager, Ben Nguyen, miscalculating the payout from the blackjack payout. Claimant was observed paying out \$7.50 for a payout when the payout should have been \$6.00. Mr. Nguyen

approached the claimant and attempted to correct the situation. However, claimant could not understand Mr. Nguyen due to him wearing a mask and the two parties having a language barrier. Claimant was then noticed putting money in the dealer tip container. Later on in the breakroom claimant approached Mr. Nguyen and complained about being approached about the situation at the table and how it was handled. Claimant then made a statement that he may have made the same mistake of paying out too much on a payout the night before due to him not encountering the \$2.50 chip frequently.

The next day, claimant was called into a meeting with his supervisor Carolyn Lucky and Jon Tingley. In the meeting claimant was notified that he was being put on suspension because the incident involving the payout was under investigation. The employer reviewed video of the incident and interviewed the claimant. Claimant admitted to paying out too much but stated it was a mistake. Claimant was mistaken about the payout because the player was using a chip that he did not frequently encounter so he miscalculated the payout.

Claimant had received a prior final warning on January 30, 2021. On January 27, 2021, claimant was observed by surveillance showing his cards before all the bets had been made or folded. An investigation by DCI found that there was no evidence of criminal misconduct. In the final warning claimant was notified that if his performance did not improve that any further disciplinary action may result in termination.

The employer did not present any evidence of specific policies the claimant violated. However, the claimant did acknowledge receipt of the employee handbook on August 9, 2016.

The claimant established an original claim for benefits that was effective April 25, 2021. Claimant's weekly benefit amount is \$512.00 a week. (DBRO). Claimant has received seven weeks of regular unemployment benefits between the weeks of May 1, 2021 through September 18, 2021. In total the claimant has received \$3,584.00 in regular unemployment benefits. (DBRO).

Claimant received three weeks of Federal Pandemic Unemployment Compensation (FPUC). In total the claimant receive \$900.00 in FPUC benefits.

The employer participate in the fact finding interview by submitting a detailed written response.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplow, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant’s control).

To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. It should not be accepted as a given fact that an employer’s subjective standards set the measure of proof necessary to establish misconduct; to do so skews procedure, forcing employees to prove that they are not capable of doing their job or that they had no intent to commit misconduct, thereby impermissibly shifting the burden from employer to employee. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986).

In this case the employer has failed to prove that the claimant acted in any deliberate way to breach the duties or obligations of his employment contract. There was no willful or wanton action or omission of claimant which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant. The employer failed to prove claimant acted with 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. The claimant stated during the initial investigation with the employer and during the hearing that he had made a mistake when he calculated the payout because it was a chip that he does not commonly encounter. The employer did not provide evidence that the conduct was deliberate or intentional. As such, employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify him from receiving benefits. Benefits are allowed and the employer’s account should be charged.

The issues of whether claimant was overpaid benefits, whether he is eligible for FPUC, and whether he should repay those benefits is moot since claimant is allowed benefits.

**DECISION:**

The July 23, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

The issues of whether claimant was overpaid benefits, whether he is eligible for FPUC, and whether he should repay those benefits is moot since claimant is allowed benefits.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

September 28, 2021  
Decision Dated and Mailed

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