

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IDA M THOMAS
Claimant

APPEAL NO. 13A-UI-07308-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

OC: 05/19/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Belle/Sioux City Riverboat filed a timely appeal from a representative's decision dated June 17, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the employer did not furnish sufficient evidence to show misconduct. After due notice was provided, a telephone hearing was held on July 8, 2013. The claimant participated personally. Participating for the employer were Ms. Queeta Hewitt, Director of Human Resources and Ms. Kerrenda Wheeler, Table Games Supervisor. Employer's Exhibits One through Twelve were received into evidence.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Ida Thomas was employed by Belle/Sioux City Riverboat from May 5, 2012 until May 21, 2013 when she was discharged from employment. Ms. Thomas was employed as a full-time table dealer and was paid by the hour. Claimant's supervisor was Kerrenda Wheeler.

Ms. Thomas was discharged from her employment with Belle/Sioux City Riverboat based upon her actions on the evening of May 14, 2013. On that night Ms. Thomas was working as a table dealer and at approximately 12:00 a.m. began to question her supervisor, Ms. Wheeler about when the claimant could take her break. After repeated questioning of the claimant who wanted to take her break because her foot hurt Ms. Wheeler stated in fact that everything was under control and that the claimant should focus on her table game. Ms. Wheeler's response angered the claimant. Ms. Thomas angrily chastised her supervisor accusing the supervisor of being untruthful and then stating that she would not be treated like a little kid.

Ms. Wheeler reported the claimant's statements and demeanor in the gaming area to the assistant operations manager on duty. Jamie Foster, the assistant operations manager on duty, called the claimant and her supervisor to a meeting in the manager's office. When Ms. Wheeler

was being questioned about the incident, the claimant again became unreasonably agitated, yelling and cutting off her supervisor and again shouting that her supervisor had been untruthful and asserting that she would not be “treated like a kid.” Claimant was again momentarily calm then resumed shouting angry and accusatory statements about the incident and her supervisor. Jamie Foster again intervened confirming that others had made allegations that Ms. Thomas had often complained about breaks; Ms. Thomas then directed her anger and statements to the assistant operations manager. Jamie Foster concluded that continuing the meeting would be unproductive and suggested that Ms. Thomas take her break and rest her foot. Upon the claimant’s return from her break, she was informed that she was being allowed to go home for the remainder of the evening because of her foot and that she should contact the company’s human resource department the following day. The claimant was escorted from the operations manager’s office by Richard Winn and her supervisor, Ms. Wheeler, from the office to an outside shuttle area. While being escorted the claimant continued to be angry and stating that she could kick/punch someone in the face. While making the statement, Ms. Thomas displayed a hand gesture resembling striking. After Ms. Thomas was escorted from the property her statements and demeanor while being escorted were reported to company management.

The matter was investigated. Statements were taken and the matter was considered by the employer. The employer concluded that Ms. Thomas had been spoken to by other managers about similar issues in the past and that the claimant’s repetitive insubordination-like conduct and her final statements and actions that referenced violence were unacceptable as well as violations of the company’s insubordination or threats of violence in the workplace policies.

Ms. Thomas generally denies any wrongdoing and denies making any physical threats. It is the claimant’s belief that the statements that she made while being escorted out were misinterpreted. It is the claimant’s belief that she stated only that she felt like “smashing something.”

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence establishes that Ms. Thomas was discharged from her employment because she had become unreasonably angry and agitated directing inappropriate comments to and about her supervisor repeatedly on the night of May 14, 2013. Because of the claimant's conduct on the floor she had been taken to the assistant operations manager's office so the matter could be discussed. During that meeting Ms. Thomas again became unreasonably agitated directing negative comments and allegations of untruthfulness to both her supervisor and the facility's assistant operations manager. Because of her conduct, a decision was made to allow Ms. Thomas to go home for the remainder of the evening. The claimant also repeatedly made reference to an injured foot and the employer instructed the claimant to go home and rest her foot and to later contact the company's human resource department. While the claimant's job appears to have been in jeopardy at that point, the employer had not made a decision regarding the claimant's continuing employment with the employer.

A decision was made to terminate Ms. Thomas after the claimant continued to be argumentative while being escorted from the facility and also because the claimant had made references to physical violence in statements that she had made to those accompanying her. The employer concluded that the claimant's ongoing conduct while being escorted from the facility showed an additional disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees. Claimant's references to smashing or hitting an individual or individuals accompanied by her physical gestures simulating a hitting motion were considered unacceptable and a violation of the company's prohibition against violence or threats of violence in the workplace.

Although the administrative law judge is aware of the claimant's denials, the evidence is found to in support of the employer. The employer's witnesses and their statements corroborate that the claimant was acting inappropriately on the night of May 14, 2013 and continued to do so after the claimant had been repeatedly advised to discontinue that type of conduct. Claimant continued to assert her unhappiness about work events although she had been repeatedly advised to discontinue her statements and her argumentative behavior. For these reasons unemployment insurance benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated June 17, 2013, reference 01, is reversed. Claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The overpayment issue is remanded to the Claims Section for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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