

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAYCI A WHITE
Claimant

APPEAL NO. 09A-UI-17394-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SAC & FOX TRIBE
MESKWAKI BINGO CASINO & HOTEL**
Employer

**Original Claim: 10/25/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jayci White, filed an appeal from a decision dated November 12, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 28, 2009. The claimant participated on her own behalf. The employer, Meskwaki Bingo, participated by Human Resources Director Thomas Swartz.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jayci White was employed by Meskwaki Bingo from October 17, 2007 until October 25, 2009 as a full-time hostess. She received progressive discipline for absenteeism on July 7, August 10, and September 4, 2009, and was aware she could be discharged if she accumulated 12 points in a 12-month period. The final warning notified her she was at 7.75 points.

After the final warning, the claimant called in absent due to illness on September 28, 2009. On October 16, 17, and 18, 2009, she called in absent for “personal reasons.” She had been in her brother’s wedding in a nearby town, but had not requested the time off in advance, even though she knew six months before the wedding what day it was scheduled. Because these absences occurred on a Friday, Saturday, and Sunday, she received 1.5 points for each occurrence because absences on weekends are assessed more points.

The food and beverage department notified the human resources department of the unexcused absences, as the individual departments do not have the authority to discharge employees without the recommendation of the human resources director. The claimant’s attendance record was reviewed by Human Resources Director Thomas Swartz, who signed off on the report and recommended discharge. The claimant was notified by Shift Supervisor Renetta Plander on October 25, 2009, she was fired.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. Even though she knew she could be fired if she accumulated 12 points, she elected to call in absent for three days to attend her brother's wedding. The claimant could not establish any reasonable cause for failing to make arrangements to have the time off several months in advance. Matters of purely personal consideration, such as personal family business, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of November 12, 2009, reference 01, is affirmed. Jayci White is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw