

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROLLAND WOOD
Claimant

APPEAL NO: 06A-UI-11359-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**OC: 10-14-06 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.26(21) – Quit/Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 14, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 12, 2006. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time casino host for Isle of Capri Casino from December 22, 1998 to October 27, 2006. On October 23, 2006, the claimant was called into the office of Director of Development, Vincent Jordan's. Mr. Jordan asked the claimant how he thought things were going and the claimant responded he thought they were going well. Mr. Jordan told the claimant he disagreed with the claimant's assessment and suggested the claimant look for other work within the casino, such as working in VIP Services, where he would have to take a 35 percent pay cut or as a coat checker making minimum wage plus tips. The claimant earned \$31,000 per year as the Casino Host. The claimant asked Mr. Jordan why he would take either job considering the pay cut and that he would still be under Mr. Jordan's supervision and Mr. Jordan suggested he look within the casino for something but the claimant decided he did not wish to try any other jobs. Mr. Jordan asked what he wanted him to do and the claimant said, "I guess I will have to leave." Mr. Jordan scheduled a meeting with Human Resources November 27, 2006. Human Resources were not aware of the scheduled meeting and when Mr. Jordan finally showed up for the meeting he asked the claimant to sign a resignation letter and the claimant did so and his employment was completed. During his first seven and one-half years as an employee the claimant was praised and rewarded for his good work. When Mr. Jordan started in approximately June 2006 the claimant received two written warnings for

failing to have “credibility” with guests or to complete his ten calls to customers per day as required on occasion. The claimant believed he was doing his job to the best of his ability and did not know his job was in jeopardy. On October 23, 2006, the claimant believed his employment would be terminated if he did not in fact resign his position so he did so October 27, 2006.

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.

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).

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000). In this case the claimant worked as a casino host at Isle of Capri until October 23, 2006, at which time he was offered two positions, neither of which would be considered suitable work based on the pay scale offered. The claimant chose to resign rather than take those demotions or face termination for failing to accept that work from the employer. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Consequently, work-connected misconduct has not been established in this case. Benefits are allowed.

DECISION:

The November 14, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs