

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDITH PUGA
Claimant

APPEAL NO: 09A-UI-17371-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATFISH BEND CASINOS II LLC
Employer

OC: 10/18/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Edith Puga (claimant) appealed an unemployment insurance decision dated November 6, 2009, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Catfish Bend Casino (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 22, 2009. The claimant participated in the hearing with Attorney Elaine Eschman. The employer participated through Steve Morley, Director of Human Resources; Dave Guzman, Table Games Manager; and Sandy Ferry, Supervisor. Employer's Exhibits One through Four and Claimant's Exhibits A, B, C, and D were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time dealer on October 27, 1994 and was dual rate, which is a dealer and a floor supervisor, at the time she was discharged on October 15, 2009. As part of the gambling treatment procedures to help persons addicted to gambling, each casino has a procedure whereby a customer can request that the casino not let them gamble. The customer completes an exclusion request and the casino subsequently sends them, return receipt requested, a notice of exclusion. The notice of exclusion provides official notification to the customer that they are, "hereby excluded from entering onto/into all properties (boat and land facilities) owned, operated or leased by Catfish Bend Casinos, L.L.C." The notice further states, "Be advised that this exclusion shall be permanent and irrevocable. If at any time during the period of your exclusion you attempt to enter onto/into any Catfish Bend Casinos properties, you will be subject to Criminal Trespass charges." Customers who are self-excluded have their pictures taken and placed with their paperwork so that they can be recognized upon entering the property.

The claimant was familiar with the self-exclusion practice because she personally requested to be excluded from Catfish Bend Casinos on December 23, 1997 due to a gambling problem. The employer sent her a notice of exclusion as described above on December 31, 1997 and the claimant signed for the letter on January 9, 1998. Additionally, the claimant was harassed by a customer named Leonard Syphrit who was excluded from the casino at his own request.

Dealers are specifically advised to notify a supervisor of anything occurring on the game that is, in any way, unusual. The dealers are also encouraged to question a supervisor at any time. Although it is not spelled out in a specific policy, employees are trained to report an excluded customer to a supervisor, who then reports it to the Department of Criminal Investigation (DCI) supervisor, since the customer could be arrested. The employer is held to strict compliance standards by the Iowa Racing and Gaming Commission when dealing with "self-barred" customers. The casino is subject to a fine of \$20,000.00 to \$100,000.00 when an employee knowingly allows an excluded customer to be in the casino, let alone gambling in the casino.

The claimant was a long-term employee who had been working for over 15 years. She knew the policies and procedures well and other employees often looked to her for answers to their policy questions. The claimant was working on October 14, 2009 at 9:22 a.m. when a customer named Ryan Anderson was gambling at her table and advised her he was self-excluded. At the hearing, the claimant testified that Mr. Anderson said he might be self-excluded; he actually excluded himself on May 17, 1998. There were three floor supervisors working that morning and Supervisor Sandy Ferry was nearby. However, the claimant took no action, she did not call over a supervisor but instead let the Mr. Anderson continue to gamble until 9:58 a.m. for a total of 36 minutes. After Mr. Anderson left, Ms. Ferry cleaned where he was sitting but the claimant still did not mention it to her or anyone else. The claimant went on break at 10:00 a.m. and when she saw DCI agent Frank Tharp, she told him that she dealt to an excluded patron. The DCI agent directed the claimant to tell her supervisor. She returned from break at 10:20 a.m. but did not report it to her supervisor until 11:45 a.m. that morning.

The director of human resources met with the chief operating officer on October 15, 2009. The decision to terminate the claimant was made due to the severity of the infraction, the moral obligation to help someone who has asked for help to stop gambling addiction, and the potential financial penalties resulting from her actions.

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 § 96.5-2-a.

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.

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 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 knowingly dealing to a self-excluded patron and allowing that customer to gamble for over 36 minutes on October 14, 2009. Her contention that she did not know any better, because it was not printed in the employer's handbook, is not supported by the facts. The claimant excluded herself in 1997 due to a gambling problem and she knew, or should have known, that it is irrevocable and the violation of which could result in criminal trespassing charges. Her actions were detrimental to the employer, to the patron, and to the gambling treatment program. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 6, 2009, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been

paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css