

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN BARRIENTES

Claimant

APPEAL NO. 09A-UI-08908-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT

Employer

OC: 10/05/08

Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Benjamin Barrientes filed an appeal from a representative's decision dated June 10, 2009, reference 01, which denied benefits based on his separation from Riverside Casino and Golf Resort. After due notice was issued, a hearing was held by telephone on July 8, 2009. Mr. Barrientes participated personally. The employer participated by Trisha Murphy, Human Resources Business Partner.

ISSUE:

At issue in this matter is whether Mr. Barrientes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Barrientes was employed by Riverside Casino and Golf Resort from March 25 until April 29, 2009 as a full-time food and beverage supervisor. He was discharged as a result of conduct that occurred on April 25.

Prior to his employment, Mr. Barrientes had a gold player's card issued by the employer. As an employee, he could no longer use the card and decided to have his points transferred to a card for his wife. His wife went to the resort club desk on April 25 to obtain a card. Mr. Barrientes' account had been closed and the several people at the desk were unsure as to how to handle issuing a card to his wife. After a brief delay, she was issued the card. She reported to her husband that she had not received good customer service. She reported that the staff had given her a hard time.

In response to his wife's complaint, Mr. Barrientes approached the staff at the resort desk and asked who had assisted his wife. He told the individual that she could take the "fucking" card and shove it up her ass. He then threw the card down on the desk and left. There were employees and customers present at the time. Mr. Barrientes' usual work station was across the hall from the resort club desk. The employer felt there might be continued friction between him and the resort club desk attendants as a result of his actions of April 25. The employer also

felt his actions were unbecoming of a supervisor, especially one who had been in the employment for such a short period of time. Therefore, Mr. Barrientes was discharged on April 29, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. The administrative law judge appreciates that Mr. Barrientes' actions were in defense of his wife, who he felt had been mistreated. However, he could have acted on his wife's behalf without the use of profanity and verbal abuse.

Mr. Barrientes' conduct was clearly contrary to the type of behavior the employer had the right to expect from one in a supervisory capacity. He created an unwarranted scene in the presence of guests and other employees. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 10, 2009, reference 01, is hereby affirmed. Mr. Barrientes was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs