

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI L ROURKE
Claimant

APPEAL NO: 100-UI-12532-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE
Employer

OC: 04/18/10
Claimant: Appellant (2)

Section 96.5-2 - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 20, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A hearing was initially held on July 15, 2010. The claimant did not participate in this hearing. On July 16, an administrative law issued a decision based on information in the administrative record.

The claimant appealed the July 16, 2010 decision. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing. Another telephone hearing was scheduled on October 26, 2010. On October 25, the claimant requested a postponement and an in-person hearing. The claimant's untimely request was denied.

The claimant participated in the October 26 hearing. The employer did not respond to the hearing notice for this hearing and did not participate in this hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time poker dealer in October 2007. The claimant understood that as a poker dealer the employer did not allow her to solicit tips.

In last March 2010, the claimant and her friend, J., worked at a Heartland Poker Tour. J. was dealing the last round of the poker tournament and the claimant waited for her. While waiting for J., the claimant started talking to a man. This man's friend was still in the competition. When this man's friend won the competition, they asked the claimant and J. where they could go for some drinks. They all went to the VFW. While at the VFW, the winner of the competition was joking around and handed out \$100.00 bills. He gave a \$100.00 bill to the claimant. Before the claimant and J. left, the claimant gave the \$100.00 bill back to the winner.

After management received information that the claimant received \$100.00 from the winner of the poker tournament, the employer discharged the claimant on April 8 for violating the employer's solicitation of tip policy. The claimant appealed her termination. As a result of the claimant's appeal, her termination was reversed. When the claimant went back to work on April 18, a gaming commission representative suspended her license because she had not provided a report to the gaming commission as she had submitted to the human resource department.

After the gaming commission held a hearing, the commission decided to revoke the claimant's gaming license. The gaming commission did not indicate in a May 6 letter why the claimant's gaming license was revoked.

The claimant filed a claim for benefits during the week of April 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable reasons for ending the claimant's employment, but the evidence does not establish that the claimant violated the employer's tip policy or solicitation of tip policy. The employer did not establish that the claimant committed work-connected misconduct. As of April 18, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's May 20, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 18, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css