

casino to drop off some guests. The entire trip should have taken approximately 20 minutes. While the claimant was gone on the trip, his supervisor called him on the company cell phone to have him pick up some additional guest and transport them to another location. The claimant told the Supervisor he was unable to come back to pick up the additional guests because there had been a fight at the Harrah's nightclub and he was not being allowed to leave by the DCI. The Supervisor called the DCI to see if he could arrange for the shuttle bus and the claimant to be released and learned that the DCI had never detained the claimant or the shuttle bus he was driving. Additional calls made to the claimant went unanswered. When the claimant returned to the employer's place of business approximately one hour later, he was interviewed by Mr. Bailey and admitted that he had fabricated the story about the DCI detaining him because he wanted to stay at Harrah's and watch the girls go in and out of the nightclub. During a subsequent interview with Mr. Meyer the claimant admitted that his behavior was wrong, but that he just felt like watching girls instead of returning to work. The claimant was discharged for lying to the employer about his whereabouts and the circumstances of his absence as well as for failing to perform his required duties.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The claimant failed to return to work in a timely manner after dropping of guests in the employer's shuttle bus. The claimant failed to return to work because he wanted to stay and watch girls enter and leave a nightclub. When initially confronted about his whereabouts, the claimant lied to the employer. The claimant's lies and failure to return to work constitute disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 1, 2005, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$474.00.

tkh/kjw