

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SEAN R RADECH
2010 GRANT ST
BETTENDORF IA 52722

IOC SERVICES LLC
1641 POPPS FERRY RD B1
BILOXI MS 39532-2226

Appeal Number: 05A-UI-00827-RT
OC: 12-19-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Sean R. Radech, filed a timely appeal from an unemployment insurance decision dated January 13, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 9, 2005, with the claimant participating. Jason True, Human Resources Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer, most recently beginning in June 2002 as a full-time slot attendant, from February 19, 2001 until he was discharged on or about December 18, 2004. The claimant was discharged for repeatedly violating an employer rule or procedure about entries in the M.E.A.L. book, which is kept in each slot machine. The employer has a rule or policy that requires that slot attendants complete the M.E.A.L. log, which is left in the slot machine, each and every time the slot attendant enters the slot machine. These rules are required by the Iowa Racing and Gaming Commission. On December 17, 2004, the claimant entered a slot machine and failed to completely fill out the M.E.A.L. log, omitting the reason for his entry into the slot machine. The reason for the entry is required in the M.E.A.L. log. The claimant failed to do so because he was in a hurry. When confronted about this the claimant offered no explanation and was discharged. The claimant had recently, on November 16, 2004, been re-trained as a slot attendant including M.E.A.L. log entries. The claimant received three written warnings for similar violations. On December 14, 2004, less than one week before his violation giving rise to his discharge, the claimant received a final written warning for a failure to log in the time on a M.E.A.L. log when he entered a slot machine and then failed to make any entry at all when he re-entered the slot machine one and one-half minutes later. The claimant does not recollect failing to log the time in on his first entry but concedes that he failed to make a second entry but felt that it was only necessary if he entered the slot machine once. However, the claimant closed the slot machine and then reopened it and entered it a second time. On August 10, 2004, the claimant received a written warning for not filling out a M.E.A.L. log at all when he entered a slot machine on August 8, 2004. On July 8, 2004, the claimant got another written warning for failing to fill out a M.E.A.L. log at all when he entered a slot machine on July 7, 2004. The claimant also received two other relevant warnings. The claimant received a written warning or counseling on November 16, 2004 for violating the employer's policy on November 5, 2004 of failing to notify a slot technician when a slot machine is refilled four times in a 24-hour period. The claimant received a written warning or counseling on June 17, 2004 for the same violation on June 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged. The parties seem to disagree as to the exact date but the administrative law judge concludes that the claimant was discharged on or about December 18, 2004 as the employer's witness, Jason True, Human Resources Manager, testified. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The testimony of the witnesses is remarkably similar. On December 17, 2004, the claimant failed to completely fill in a M.E.A.L. book contained in each slot machine and required to be completed when a slot attendant enters a slot machine. The claimant entered a slot machine and failed to complete the M.E.A.L. log by indicating the reason for his entry into the slot machine and a reason is required on the M.E.A.L. log. The claimant admitted he failed to do this. The claimant testified that he was in a hurry and that time was stressed. However, this incident occurred less than one week after the claimant got a final warning on December 14, 2004 for the same thing on December 9, 2004. On that occasion the claimant denies that he failed to log in a time but concedes that after reopening a slot machine one and one-half minutes later, he did not enter into the log at all. The claimant also received two written warnings for the same behavior on August 10, 2004 and July 8, 2004. The claimant also conceded that he received two written warnings or counselings for violation of other employer's rules concerning slot machines when he failed on two occasions to notify a slot technician when the slot machine was filled four times in 24 hours. The employer requires that a slot attendant notify a slot technician anytime the slot attendant or others fill a slot machine four times in 24 hours. The claimant concedes that he failed to do so on two occasions and concedes that he got the two written warnings or counselings. The claimant was even re-trained concerning the slot attendant functions and duties on November 16, 2004.

Because the claimant received numerous warnings for the same violation as well as two warnings for violations of other rules related to the slot machine, and the final incident occurred

less than one week after the claimant had received a final written warning, the administrative law judge is constrained to conclude that the claimant's failures to properly complete the M.E.A.L. logs and his other violations of the employer's policies were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and, at the very least, are carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. The claimant testified that he failed to do these matters because he was in a hurry and the time was stressed. The administrative law judge does not believe that this is an excuse to violate clear employer's policies as shown at Employer's Exhibit One and policies that are required by the Iowa Racing and Gaming Commission and further, policies which he had violated previously and been given warnings. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 13, 2005, reference 01, is affirmed. The claimant, Sean R. Radech, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

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