

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID J TAMMENGA
Claimant

R C CASINO LLC
Employer

APPEAL 17A-UI-10434-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2017 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failing to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on October 31, 2017. The claimant, David J. Tammenga, participated. The employer, R. C. Casino, L.L.C., participated through Sara Minard, Senior HR Business Partner. Employer's Exhibits 1 through 12 were received and admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a surveillance operator, from October 26, 2015, until September 15, 2017, when he was discharged for performance issues. On September 13 and 14, the employer conducted a review of claimant's surveillance operation reports ("SORs"). On September 11, 2017, claimant prepared a report with multiple substantive errors. (Exhibit 9). He mis-stated the amount of the bet at issue, which ultimately resulted in the guest being shorted money. Additionally, claimant stated the incorrect time on the SOR. On September 12, 2017, claimant prepared an SOR in which he used incorrect terminology for the game he was observing. (Exhibit 11). Additionally, the report did not clearly state that the same guest was playing two spots at the gaming table.

Claimant had been warned multiple times in the past for issues with his SORs. On September 19, 2016, claimant was issued a performance coaching for errors in an SOR he wrote on September 4. (Exhibit 3). This SOR incorrectly stated the time, failed to state that the bet was incorrectly swept, and stated an incorrect amount that was paid back to the house. On October 22, 2016, claimant was issued a first warning for errors in an SOR he wrote on October 15. (Exhibit 4). In this SOR, claimant listed the date incorrectly, failed to individually list the bets, and failed to list the floor supervisor's name correctly. Claimant was specifically cautioned in

this document that he needed to improve his attention to detail. On May 27, 2017, claimant received a first warning for errors in an SOR he wrote on April 30. Claimant misidentified one of the hands that a guest had, which caused confusion in the outcome of the hand and the review. The employer explained that these SOR documents are used for both internal purposes, such as employee coaching, and external purposes involving the Department of Criminal Investigations and state and local authorities.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be

“substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Here, claimant was given multiple warnings for issues with his SORs, and he had numerous opportunities to work more carefully and improve his performance. Claimant chose not to do this. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The October 5, 2017 (reference 02) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn