

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN E GRIGLIONE

Claimant

APPEAL 17A-UI-07084-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT

Employer

OC: 06/11/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2017. Claimant participated. Employer participated through human resources business partner Anna Cavanaugh and cage manager Tracy Miller.

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 as a cage shift supervisor from September 13, 2006, and was separated from employment on July 13, 2017, when she was discharged.

The employer has a written standard operating procedure that requires employees to have their banks/drawers balance at the end of their shift. The standard operating procedure provides for different levels of discipline for a first offense depending on the amount of the overage or shortage. The employer also has a progressive disciplinary policy. Claimant was aware of the policies.

Prior to June 6, 2017, the employer gave claimant multiple disciplinary warnings. On October 18, 2016, the employer gave claimant a written warning for a \$100.00 overage in her bank. On December 14, 2016, the employer gave claimant a final warning for verifying another cashier for an amount that caused a cashier to overpay a patron \$500.00. On April 25, 2017, the employer gave claimant a final warning and a one day suspension because she had a \$100.00 shortage in her bank on April 5, 2017 and a \$100.00 shortage in her bank on April 11, 2017 (claimant overpaid a patron \$100.00). Claimant was warned that her job was in jeopardy.

On June 6, 2017, claimant's bank that she was responsible for was missing \$100.00. The vault supervisor reported claimant's shortage to accounting with a possible surveillance review. Claimant was allowed to continue work after June 6, 2017, while the employer investigated the incident.

On June 12, 2017, during claimant's shift, she underpaid a patron \$1,000.00. The patron walked all the way to the parking lot before realizing he was underpaid. The patron then returned to claimant during her shift to get the \$1,000.00. The surveillance department first confirmed the underpayment and then claimant paid the patron the \$1,000.00.

On June 13, 2017, at the end of claimant's shift, she had a \$100.00 shortage in her bank. The employer determined that claimant had overpaid a patron \$100.00 during her shift. On June 13, 2017, the employer discharged claimant due the variances in her bank.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's rule requiring employees' banks to balance at the end of their shift is reasonable. The employer gave claimant multiple warnings regarding variances in her bank balance and she was warned her job was in jeopardy on April 25, 2017. Despite these warnings, claimant's bank had \$100.00 shortages on June 6, 2017 and June 13, 2017.

The employer has presented substantial and credible evidence that claimant's bank that she was responsible for had \$100.00 shortages on June 6, 2017 and June 13, 2017, after having been warned. This is disqualifying misconduct. Benefits are denied.

DECISION:

The July 11, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs