

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHANOMKEO PONGDARA
Claimant

APPEAL NO. 07A-UI-04086-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA GAMING COMPANY
BELLE OF SIOUX CITY RIVERBOAT**
Employer

**OC: 03/25/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Phanomkeo Pongdara filed a timely appeal from an unemployment insurance decision dated April 12, 2007, reference 01, that disqualified her for benefits following her discharge from employment with the Belle of Sioux City Riverboat. After due notice was issued, a telephone hearing was held May 9, 2007 with Ms. Pongdara participating and being represented by William Niebel, Attorney at Law. Human Resources Director Barb Holsinger and Casino Operations Director Mike Galley participated on behalf of the employer. Claimant Exhibit A and Employer Exhibit One were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Phanomkeo Pongdara was employed by the Belle of Sioux City Riverboat from May 11, 2005 until she was discharged March 27, 2007. She last worked as a dealer.

The Belle of Sioux City has a policy prohibiting actual or potential conflicts of interest with customers, suppliers and the like. Ms. Pongdara received a copy of that policy. The policy on its face does not speak specifically of loans but is couched in very general terms covering many types of business relationships.

Ms. Pongdara became friends with a patron of the casino, Chuck Topp. In December 2006 Ms. Pongdara asked for a loan of \$800.00 from Mr. Topp with the understanding that she would repay him after she received her income tax refund in the spring of 2007.

Management at the Belle of Sioux City learned of this when Mr. Topp complained on or about March 20, 2007 that Ms. Pongdara had not repaid him and was refusing to take his phone calls. After investigation, the employer discharged Ms. Pongdara.

Also in March 2007, a relative of Ms. Pongdara, also employed by Belle of Sioux City, filed a complaint against the employer with the Iowa Civil Rights Commission. The relative named Ms. Pongdara as a contact person for the Civil Rights Commission. Her name was not released to Belle of Sioux City. The relative's civil rights complaint played no role in the decision to discharge Ms. Pongdara.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

As noted in the findings of fact, the employer's written policy does not specifically mention loans from patrons. Nevertheless, the administrative law judge concludes that the language of the policy is clear enough that an employee would reasonably understand that it would be inappropriate to ask for a loan from a patron. Regardless of the nature of the friendship between Ms. Pongdara and Mr. Topp, the claimant's testimony establishes that she first met him through her employment. The administrative law judge concludes that the claimant was discharged for violating the employer's policy prohibiting conflicts of interest.

The claimant argued that the employer's stated reason for the discharge was a pretext for firing her because of her relative's civil rights complaint. The evidence fails to establish that the employer was aware of the family relationship or that Ms. Pongdara had been named as a contact person by the relative.

DECISION:

The unemployment insurance decision dated April 12, 2007, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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