

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RICHARD B BISHOP**  
Claimant

**R C CASINO LLC**  
Employer

**APPEAL NO. 14A-UI-05243-B2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/20/14  
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 29, 2014. Claimant participated personally. Employer participated by Jason True. Employer's Exhibits One, Two, Three, Five, and Six and Claimant's Exhibits A through C were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 11, 2014. Employer discharged claimant on April 23, 2014 because of excessive absenteeism. Claimant states that he had previously quit before, on or around April 16, 2014, as he determined that the light-duty work assigned to him was too taxing on his injured foot and leg.

Claimant had worked for the previous owner of Rhythm City Casino and continued his part-time employment as a valet when the new owners took over the business. Claimant had injured his calf in some manner in February, but didn't report it. Claimant injured his foot at work in early April 2014. At this time claimant reported both this injury and his old injury. Claimant was sent to a physician to look at his injury. The document he brought back to employer stated that he was to be limiting his standing and walking and rarely (four to eight times per hour) squatting. Claimant was temporarily removed from his job as a valet and asked to clean slot machines to minimize his walking around. Unfortunately, to do this job claimant had to squat 20 to 30 times every hour as he moved from seat to seat when the slots were cleaned. Claimant was very uncomfortable with this new job and called his contact person to tell of this discomfort. The contact person stated he had many more slots to clean.

Claimant did not call nor did he show for his next scheduled work shift. When work called him, he stated that he needed to be off his feet for an extended period of time and wouldn't be in to work as it was too uncomfortable. When claimant didn't show for work he was fired for missing too many days and amassing too many points, as all employees were considered new hires when the new company came in.

## **REASONING AND CONCLUSIONS OF LAW:**

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).

Iowa Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant had informed employer about his injury. Employer gave claimant alternative work; unfortunately that work did not conform to the restrictions placed on claimant by the doctor's note. When claimant complained about this, his complaints were ignored and he was told he'd be doing more of the same substitute work.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant attempted to contact the correct person in order to try and get appropriate substitute work when the first assignment did not work with his injury. The administrative law judge holds that claimant was not discharged for an act of misconduct when he did not show up for work and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated May 12, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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