

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOELLE YOUNGBEAR
Claimant

APPEAL NO. 14A-UI-04805-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE
Employer

OC: 04/13/14
Claimant: Appellant (1-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 1, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 28, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Lucy Roberts participated in the hearing on behalf of the employer with witnesses, Sue Keeler and David Oldbear.

ISSUE:

Was the claimant suspended and then discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an inventory control worker from March 13, 2003, to November 1, 2013. She was informed and understood that under the employer's work rules, she was required to maintain a valid gaming license issued by the Iowa Racing and Gaming Commission to be employed and criminal offenses could affect her licensure.

In November 2013, the claimant was arrested and charged with several criminal offenses, including first-degree burglary, two counts of willful injury, and assault while participating in a felony. The offenses were for off-duty conduct. As a result of these charges, the claimant's gaming license was suspended. Iowa Racing and Gaming Commission notified the employer in November 2013 that it could no longer employ the claimant because of the criminal charges against her.

The employer considered the claimant on suspension without pay until March 10, 2014, when she resigned in lieu of being discharged to avoid having a discharge on her record, which would affect her employment opportunities with the employer and other employers.

In early May 2014, the claimant pled guilty to reduced felony charges of second-degree burglary and the two counts of willful injury with the other offenses being dismissed. She will be sentenced on this offense in June.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The unemployment insurance rules provide: "Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered discharged, and the issue of misconduct must be resolved." 871 IAC 24.32(9).

The Iowa Supreme Court in *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980), ruled that a delivery driver who lost his insurability due to repeated traffic violations and was discharged for this reason was discharged for work-connected misconduct under the unemployment insurance law. Likewise, the claimant in this case knew her employment could be suspended or terminated if she did not have a valid gaming license and that criminal offenses could affect her gaming license. As demonstrated by her guilty pleas, the claimant in fact committed criminal acts that caused her to be unemployable in a casino. The claimant was suspended for work-connected misconduct in November 1, 2013,

The law provides for an enhanced disqualification for a claimant who loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. This enhanced disqualification cancels the person's wage credits earned, prior to the date of discharge, from all employers. Iowa Code § 96.5-2-b & c. This was not an issued listed on the hearing notice. The matter of deciding if the claimant is subject to a gross misconduct disqualification is remanded to the Agency.

DECISION:

The unemployment insurance decision dated May 1, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant is subject to a gross misconduct disqualification is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs