

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA J GOODWIN
Claimant

APPEAL NO. 06A-UI-10496-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**OC: 10/01/06 R: 04
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

IOC Services, doing business as Isle of Capri Casinos, filed a timely appeal from the October 20, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 13, 2006. Claimant Maria Goodwin participated. Managerial Associate Sarah Frank represented the employer. Employer's Exhibits One and Two were received into evidence. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits. She was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Goodwin was employed by Isle of Capri Casinos as a full-time housekeeping inspectress from March 5, 1992 until September 19, 2006, when Housekeeping Supervisor Rhonda Collins suspended her. The hotel director subsequently discharged Ms. Goodwin on September 22, 2006.

The final incident that prompted the suspension and discharge occurred on September 19, 2006 when Ms. Goodwin briefly misplaced her master key. Ms. Goodwin noticed she had misplaced the key immediately upon leaving a room she had just inspected. Ms. Goodwin needed her key to enter the next room. Ms. Goodwin immediately notified her supervisor that she had misplaced the key and commenced a search for the key. Ms. Goodwin found her key on a housekeeper's cart, where it had likely landed after falling from Ms. Goodwin's clipboard. The key was in the form of a credit card and contained no means of securing it to Ms. Goodwin's person. Within an hour of losing the key, Ms. Goodwin had located the key and reported both the loss and recovery to her immediate supervisor. Nonetheless, Housekeeping Supervisor Rhonda Collins suspended Ms. Goodwin for two days in connection with the incident. When Ms. Goodwin arrived for work on September 22, the hotel director advised Ms. Goodwin that she was overriding the suspension and was discharging Ms. Goodwin from the employment. In

early June, Ms. Goodwin had misplaced her key and it was located the next day. Ms. Goodwin received a written reprimand in connection with both incidents. Ms. Goodwin had not otherwise misplaced her key.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Goodwin was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes two isolated incidents of ordinary negligence. Given the nature of the key, it was inevitable that one or more employees would misplace it on occasion. The incident that prompted the discharge involved just such an accident. Ms. Goodwin took immediate and appropriate steps to address the situation and soon recovered the key where she had accidentally left it. The June loss of the key was more egregious than the incident that prompted the suspension and discharge, but also involved only isolated, ordinary negligence. The evidence falls short of recurrent negligence and/or carelessness that would indicate a willful or wanton disregard of the interests of the employer. On the contrary, the evidence indicates that Ms. Goodwin acted to further the interests of the employer through the steps she took to report the loss and locate the key.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Goodwin was discharged for no disqualifying reason. Accordingly, Ms. Goodwin is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Goodwin.

DECISION:

The Agency representative's October 20, 2006, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/cs