

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA J STRUCKMAN**  
Claimant

**APPEAL NO: 07A-UI-03618-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
**MISSISSIPPI BELLE II**  
Employer

**OC: 03/04/07 R: 04**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 2, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 24, 2007. Claimant participated. Employer participated through Randy Tompkins, Cindy Fullick, Chris Snider, Rebecca Burmeister, and Shawn Burden. Claimant's Exhibits A and B were received. Employer's Exhibit 1 was received.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time player services representative from November 15, 1994 until March 1, 2007 when she was discharged. She did not have a gaming license as of the separation date, which is required for employment. Gaming licenses are renewed every two years. There is not a grace period for license renewal, which is the employee's responsibility.

She had signed up to go on February 8 with the department but her son was ill. Chris Snider had claimant in her office on February 9 in the morning and called claimant's supervisor Shawn Burden if claimant could go then to get her license then. Shawn said they were not busy and she could go. Snider told claimant she could take the company vehicle at that time to get her license. She said she did not want to go then but would do it on her day off. She told Snider she does not like it when people tell her what to do and she will "butt heads." She would have been paid for the time it took to go renew her license. Claimant returned to work and went on break telling Burden she would get the license taken care of on her day off.

Cindy Fullick told claimant on February 23 she must make her own appointment to renew her license and must get this done by February 28 as her license would expire on March 1

according to Chris Snider who was on the phone in Fullick's office and relayed the information to Snider that claimant would have to go to the racing and gaming office and renew it herself rather than go through the company. Rebecca Burmeister was waiting to see Fullick right outside the office door and heard the conversation.

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

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

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.

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).

Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980). A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v. IDJS*, 318 N.W.2d 28 (Iowa App. 1982). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986).

It is ultimately the license holder's responsibility to renew the gaming license. In spite of employer's best efforts, claimant did not avail herself of at least two opportunities to renew her license on work time and using the company vehicle. Nor did she make reasonable individual efforts to get her license renewed on her own time or days off. Since claimant had held her license since 1994 and had renewed successfully in the past and on time, she is reasonably charged with either knowing or finding out the deadline, either from the state racing and gaming commission or from the employer. It is not the employer's duty to hand hold employees through the process. Since the gaming license was a requirement of the job and as of March 1 claimant did not have a current license, her separation was disqualifying. Benefits are denied.

**DECISION:**

The April 2, 2007, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs