

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA ROMPA
Claimant

APPEAL NO. 16A-UI-10500-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT
Employer

OC: 09/04/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Riverside Casino and Golf Resort (employer) appealed a representative's September 21, 2016, decision (reference 01) that concluded Melissa Rompa (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 11, 2016. The claimant participated personally. The employer participated by Anna Cavanaugh, Human Resource Business Partner, and Jodee Radosevich, Table Games Director. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 2, 2011, as a full-time supervisor one in table games. The claimant signed for receipt of the employer's handbook on May 2, 2011. The employer issued the claimant some warnings for attendance.

On July 5, 2016, the employer's representative told the claimant she could transfer into a position in the pro shop starting on July 7, 2016, the start of a pay period. On July 6, 2016, the employer told the claimant she would have to work one more week in her current job because the table games director was short staffed. On July 14, 2016, the employer told the claimant she would have to work two more weeks in her current job because she could not transfer in the middle of a pay period. The table games director would not release her.

On July 15, 2016, the claimant was frustrated because she realized the pay period ended on July 21, 2016, not July 28, 2016. The employer scheduled the claimant to work at the pool and at table games on July 16, 2016. Hours before her shift started on July 15, 2016, she called the table games director. The claimant was upset that she could not start her new job. The table games director said it was the first she had heard of the issue even though the claimant had

discussed the matter with her previously. The claimant expressed disbelief. The table games director said, "Listen here. I'll release you when I'm ready". The claimant said, "Fuck off". The table games director said, "You're done" and hung up. The employer terminated the claimant for inappropriate conduct.

The claimant filed for unemployment insurance benefits with an effective date of September 4, 2016. The employer did not participate in the fact finding interview on September 20, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant had a single incident of inappropriate language in response to a pattern of inappropriate and unprofessional conduct by the employer.

The employer offered the claimant a job with a starting date and the claimant accepted the offer. The employer thought nothing of breaking this agreement. The employer made another agreement for employment with the claimant with a new starting date. The employer broke the agreement. While the claimant's words cannot be condoned, they were said after the table games director threatened her with never fulfilling the employer's promise of employment. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 21, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs