

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT A DANIEL
Claimant

APPEAL NO. 12A-UI-06074-HT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

SAC & FOX TRIBE
Employer

**OC: 04/22/12
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Matt Daniel, filed an appeal from a decision dated May 22, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 12, 2012. The claimant participated on his own behalf. The employer, Sac & Fox Tribe, participated by Human Resources Director Lucy Roberts.

ISSUE:

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

FINDINGS OF FACT:

Matt Daniel was employed by Sac & Fox Tribe from August 18, 2010 until April 19, 2012 as a full-time bartender. He had received written warnings for “variances,” that is, a discrepancy in his case drawer, on several occasions and other warnings regarding his work performance. His final warning and two-day suspension was given March 24, 2012, and warned him his job was in jeopardy if he had any further incidents.

The employer alleged the claimant was given extra cleaning duties the night of April 15, 2012, because there would be an inspection the next day. The warning alleged he had “disputed” the directives given by his supervisor and said he did not care if he was written up because he had been written up before.

The claimant said he questioned why the list of chores had not been given to him earlier in his shift so he could get a start on the jobs, or why the day bartender could not have done some of them. But he did as many of the extra tasks as possible with only a small amount of help from another employee. The final warning was for the alleged “disputing the directives” and issued on April 19, 2012, at which time he was fired.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any first hand, eye witness testimony about the events of the night of April 15, 2012. No one was present to dispute the claimant's version of the events.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of May 22, 2012, reference 01, is reversed. Matt Daniel is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs