

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRICK T RILEY
Claimant

APPEAL NO. 13A-UI-09214-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATFISH BEND CASINOS II LLC
Employer

OC: 07/14/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 5, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on September 16, 2013. Claimant participated. Employer participated through Steve Morley Director of Human Resources and Dave Guzman, Table Games Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a dealer beginning on June 15, 2012 through July 15, 2013, when he was discharged. The claimant was hired knowing he would have to work every Sunday. The employer never guaranteed the claimant every other Sunday off. The claimant was scheduled to work dealing a poker tournament on July 14. He knew for weeks prior to the event of July 14 that his name was on the schedule and he was expected to work. The claimant chose not to try and find a replacement for his shift, although in the past he had demonstrated the ability to do so. The claimant was scheduled to work every Sunday. The only time he was off on Sunday was when he found a replacement or when the employer had no work for him so granted him time off. On July 14 the claimant called into work, indicating he knew he was to be at work, and simply told the employer that he was not coming to work that day because he wanted to spend time with his daughter. The employer counts on employees showing up for work so customers can participate in the table games that generate revenue for the employer. When the claimant refused to show up for work, despite knowing he was scheduled to do so, the employer discharged him. The employer was not obligated to continue to give the claimant additional chances to damage the business.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant asked for every other Sunday off but his request was denied. The claimant had found other employees to cover or trade shifts with him in the past. The claimant had at least two-week' notice that he was required to work on July 14 but made no effort to trade with any other employee or to try and find another employee to cover for him. He simply determined that he was not going to work no matter what. The claimant's failure to show up for work damages the employer's business. Under these circumstances the employer is not required to provide the claimant with ongoing opportunities to damage the business when the claimant's actions were so clearly not in the employer's best interests. The claimant's actions amount to misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 5, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css