

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS M SEDA
Claimant

APPEAL NO: 12A-UI-08465-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SAC & FOX TRIBE
MESKWAKI BINGO CASINO & HOTEL**
Employer

OC: 06/03/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 2, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Luci Roberts and John Papakee, the slot director, appeared on the employer's behalf. Based on the evidence, the parties' arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2001. He worked full-time as a slot attendant. The claimant's job required him to possess an active gaming license.

On February 6, 2012, the gaming commission suspended the claimant's gaming license until his court case was resolved. When the claimant's gaming license was suspended, he could not work or even go on the employer's property. The claimant participated in an administrative hearing before the gaming commission on February 27, 2012. The commission did not take any action at that time.

On April 27, Papakee talked to the claimant, who was then hospitalized. Papakee told the claimant he had two choices: 1: report to work by May 4 or be discharged or 2: complete a voluntarily resignation form. If the claimant resigned, he was eligible to reapply for a job in 30 days. If the employer discharged him, the claimant had to wait a year before he could reapply for a job.

The claimant could not report to work on May 4, because he was not released from the hospital until May 9. Also, since his gaming license was still suspended, he was not allowed on the

employer's property. The employer sent the claimant a voluntary resignation form, but the claimant did not complete it. He had no intention of resigning.

On May 14, the claimant's court case was resolved. The gaming commission reinstated the claimant's gaming license on May 17. Before the claimant received official notice that his game license was reinstated, he called Papakee on May 15 to let the employer know his court case had been resolved and he was ready to return to work. On May 15, the employer informed the claimant his position had been filled and the employer had no other job available.

On May 18, the employer no longer considered the claimant an employee, because he had abandoned his employment when he failed to report to work on May 4, 2012. When the claimant received information about COBRA, this document indicated he had been terminated as of May 4, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)-a. The claimant did not voluntarily quit his employment. Instead, the employer discharged him.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because he did not have an active gaming license since early February 2012, when his license was suspended. The employer had justifiable business reasons for replacing the claimant, but the claimant's gaming license had been suspended for three months before the employer ended his employment. The employer did not establish that the claimant committed a current act of work-connected misconduct. Even if the claimant's gaming license had been suspended in May, the reason for the suspension does not constitute

work-connected misconduct, because after the claimant's court case was resolved his license was reinstated.

The employer asserted the claimant was also discharged because he abandoned his employment when he failed to report to work on May 4. The employer knew or should have known the claimant could not go to work when his gaming license was suspended. Also, the claimant was unable to work on May 4 because he was still hospitalized. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of June 3, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's July 2, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of June 3, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw