

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELPHER N WEAVER**  
Claimant

**APPEAL NO. 10A-UI-05996-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BELLE/SIOUX CITY RIVERBOAT**  
Employer

**Original Claim: 03/28/10  
Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, Melper Weaver, filed an appeal from a decision dated April 19, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 9, 2010. The claimant participated on her own behalf. The employer, Belle/Sioux City, participated by Human Resources Specialist Karen Johnson, Human Resources Assistant Linda Carson, and Cage Manager Orlando Jordan.

**ISSUE:**

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

**FINDINGS OF FACT:**

Melper Weaver was employed by Belle/Sioux City from January 3, 2002 until March 23, 2010 as a full-time cage cashier. During the course of her employment, she received a verbal and written warning for tardiness on April 14, 2009, and a three-day suspension for the same thing on February 17, 2010. In addition, she received a written warning for failing to verify the amount of a "poker buy" and shorted the poker room \$500.00 on June 19, 2009. She was notified her job was in jeopardy.

On March 12, 2010, she again failed to verify the amount of a poker buy and shorted the poker room \$180.00. The surveillance department issued a report that was sent to Cage Manager Orlando Jordan. Eleven days later the claimant was discharged.

The employer could not account for the time lapse between the date of the incident and the date of the discharge. Mr. Jordan acknowledged he received the report from the surveillance department and consulted with his immediate supervisor, then watched the surveillance footage. The latter took only a "few minutes" and was done for verification purposes only.

## 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer cannot account for a gap of 11 days between the date of the final incident and the date the claimant was discharged. None of the employer's witnesses could provide any kind of time line regarding the date the report was sent, the date Mr. Jordan opened and read the e-mail, the date he consulted with his supervisor, the date he reviewed the surveillance footage, and the date the decision was finally made.

From the prior warnings given to the claimant, it is evident the employer usually acted in a timely manner to issue discipline for rule violations. The prior cash shortage warning was given in less than a week. The administrative law judge cannot find the employer acted in a timely manner or been able to provide an explanation for the delay. This was not a current act of misconduct and, for that reason only, disqualification may not be imposed.

**DECISION:**

The representative's decision of April 19, 2010, reference 01, is reversed. Melper Weaver is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw