

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY E SPITZER
Claimant

APPEAL NO: 12A-UI-08270-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT
Employer

OC: 06/10/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 2, 2012 reference 01 that held the claimant was not discharged for misconduct on June 14, 2012, and which allowed benefits. A telephone hearing was held on August 2, 2012. The claimant participated. Bobbi Adamson, HR business partner, and Megan Lynch, security director, participated for the employer. Employer Exhibits 1 through 9 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on August 7, 2006, and last worked for the employer as a full-time security manager on June 11, 2012. The employer issued claimant a final written warning with a job demotion on May 31, 2012. The warning lists the most recent incidents of April 22/29. Claimant's demotion to Security Officer III was to take effect June 14.

The employer suspended claimant on June 11 based on employee reports he was making negative comments about the business. The employer confronted claimant on June 14 during a meeting. Claimant denied making statements the employer's workplace was a "shit hole or cesspool". He also denies telling employees to look for work elsewhere because it treats them terrible or the casino is trash. The employer discharged claimant for making negative statements about the business in light of prior discipline.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on June 14, 2012.

It is understandable claimant was not pleased about his demotion on May 31, but the claimant denies the negative statements as the moving reason for discharge and the employer offered no employee witness to refute him. No witness statement accuses claimant of saying the employer workplace is a "shit hole" or "cesspool" yet the employer challenged claimant with this allegation during his discharge meeting. It is believable the employees did embellish or misinterpret what claimant said after his demotion about the employer. This is the current act of misconduct alleged by the employer, and it is not established.

DECISION:

The department decision dated July 2, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on June 14, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw