

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID M STEWARD**  
Claimant

**APPEAL NO. 07A-UI-10797-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATFISH BEND CASINOS II LLC**  
Employer

**OC: 10/28/07 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

David M. Steward (claimant) appealed a representative's November 20, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Catfish Bend Casinos II, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2007. The claimant participated in the hearing. Steve Morley appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 15, 2000. He worked full time as a security supervisor on the evening shift in the employer's Fort Madison, Iowa casino. His last day of work was October 27, 2007. The employer discharged him on October 30, 2007. The reason asserted for the discharge was posting an inappropriate cartoon on a bulletin board.

In the administrative office area of the casino, there was a bulletin board that was supposed to be reserved for official communications. The employer's policy provided that there could be no literature or solicitations posted on the board without prior approval of the human resources director, Mr. Morley. After Mr. Morley's office was moved to the employer's Burlington office in approximately June 2007, the enforcement of the policy became somewhat more lax; while Mr. Morley would remove unauthorized material on occasion, no disciplinary measures were taken against persons who had made postings.

Shortly before October 27, the employer announced that the Fort Madison casino location would be closed and that many of the employees would likely be laid off. Morale among the employees was poor. On October 27 the claimant posted a "Dilbert" cartoon on the bulletin

board. The cartoon shows Dilbert asking a garbage collector, "Why does it seem as if most of the decisions in my workplace are made by drunken lemurs?" The garbage collector responds, "Decisions are made by people who have time, not people who have talent." Dilbert replies, "Why are talented people so busy?" and the garbage collector answers, "They're fixing the problems made by people who have time."

Another manager reported the posting of the cartoon to Mr. Morley, and Mr. Morley determined that the claimant was the one who had posted the cartoon. When he confronted the claimant on October 30, the claimant admitted he had posted the cartoon, indicating that he had done so in the hope that a little levity might alleviate the poor employee morale. The employer concluded that the claimant was referring to the employer's management as "drunken lemurs" and determined to discharge the claimant for the posting. There had been no prior comparable issue regarding the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his posting of the “Dilbert” cartoon regarding drunken lemurs on the bulletin board for official communications. Under the circumstances of this case, the claimant's posting of the cartoon was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion, as compared to intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's November 20, 2007 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw