

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**EMILEA J O'NEALL  
2850 – 230<sup>TH</sup> ST  
AFTON IA 50830**

**TERRIBLE'S LAKESIDE CASINO  
777 CASINO DR  
PO BOX 424  
OSCEOLA IA 50213-0424**

**Appeal Number: 05A-UI-06565-CT  
OC: 05/29/05 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Emilea O'Neall filed an appeal from a representative's decision dated June 15, 2005, reference 01, which denied benefits based on her separation from Terrible's Lakeside Casino. After due notice was issued, a hearing was held by telephone on July 12, 2005. Ms. O'Neall participated personally. The employer participated by Carol Eckels, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. O'Neall was employed by the casino from December 2,

1999 until May 27, 2005. She was last employed full time as a food and beverage supervisor, a position she had held since May 7, 2002. The employer has a written policy, of which Ms. O'Neill was aware, that prohibits food and beverage supervisors from accepting tips from patrons. On May 24, 2005, it was brought to management's attention that Ms. O'Neill had accepted \$20.00 in tips. She was suspended on May 25 and notified of her discharge on May 27, 2005.

Her acceptance of tips was the sole reason for Ms. O'Neill's discharge. She told the employer that she had received permission from her supervisor to accept tips in July of 2002 and had been accepting tips from that point in time. She indicated that permission was given at that time because the department was understaffed and she was sometimes working as many as 55 hours per week. When questioned by the employer, the supervisor denied having given permission to accept tips. It was this same supervisor that reported Ms. O'Neill's acceptance of tips in May of 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. O'Neill was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. O'Neill was discharged for accepting tips in violation of a known company rule. As a supervisor, it was her responsibility to know and follow company rules in order to set the standard for others working under her. Her conduct was contrary to the type of behavior the employer had the right to expect from a supervisor.

Ms. O'Neill contended that she had been given permission in July of 2002 to accept tips. The administrative law judge did not find this contention credible. It seems unlikely that the supervisor would allow Ms. O'Neill, and Ms. O'Neill alone, to accept tips in violation of policy because he was unable to give her a raise.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated June 15, 2005, reference 01, is hereby affirmed. Ms. O'Neill was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/sc