

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA L BURHENN
Claimant

APPEAL NO. 11A-UI-02853-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

**OC: 09/12/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rhonda Burhenn (claimant) appealed a representative's February 28, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Meskwaki Bingo Casino & Hotel (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 31, 2011. The claimant participated personally. The employer participated by Corbett Howard, Director of Human Resources, and Terri Papesh, Administrative Assistant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 27, 1994, as a full-time assistant shift supervisor. The claimant signed for receipt of the employer's handbook on December 31, 2007. The claimant did not receive any warnings during her last four years of employment.

The employees placed tips in an envelope and placed the envelope in a wooden box on a lower shelf in the KENO area. At the end of the shift, workers shared the total amount of tips. On July 17, 2010, the employer notified employees that it would be changing the policy regarding tips. The new policy indicated that the employer would provide a clear box for tips that would be placed on the counter. All tips from both the day and swing shifts would be placed in the clear box. The clear box was to be taken to the cage for counting, dividing and recording on the workers' payroll. The employer did not provide the clear box and all workers continued to work under the previous system. For two months no workers took tips to the cage.

On September 5, 2010, the claimant worked with one other worker. A customer handed each a \$100.00 tip. The two employees split the amount evenly and kept the tip. The claimant went on vacation from September 7 through 13, 2010. When she returned she discovered she had been

suspended. She was terminated on September 15, 2010, for failure to follow the July 17, 2010, policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant did not follow the employer's instructions because the employer did not provide the tools to follow its instructions. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 28, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs