

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE T ESTNESS

Claimant

APPEAL NO. 10A-UI-10044-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE MEADOWS RACETRACK

Employer

OC: 05/30/10

Claimant: Respondent (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 6, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 31, 2010. Claimant participated. Employer participated by Pam Anderson, Human Resources Recruiter. The record consists of the testimony of Pam Anderson and the testimony of Catherine Estness.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates a racing and gaming facility in Altoona, Iowa. The claimant was hired on January 5, 2004, as a casino floor attendant. A casino floor attendant interacts with guests and performs tasks such as paying out jackpots; making change; and fixing slot machines. The claimant was terminated on June 4, 2010, for unsatisfactory performance based on a progressive discipline/performance policy.

The incident that led to the claimant's termination occurred on May 27, 2010. The claimant was working the swing shift, which runs from 5:00 p.m. to 1:30 a.m. This is the busiest shift. On May 27, 2010, approximately 30 percent of the employer's games were in play and the employer was fully staffed. If a casino attendant has to open up a slot machine, the attendant uses a player's card in the name of the attendant, which creates a computer record. Inside the slot machine is a handwritten log known as a meal book. The attendant must also fill out the meal book so that the next attendant who opens up the slot machine knows why the machine was opened previously and when. This meal book is an internal control used by the employer.

On May 27, 2010, the claimant opened up a slot machine and only partially filled out the meal ticket. When this was discovered by the employer, the claimant was terminated. The claimant

had been previously disciplined with a five day suspension on March 28, 2010, for not verifying a taxable jackpot documentation. She was also suspended for one day on July 22, 2009. There was also a failure to complete a meal book on February 5, 2010.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes unsatisfactory performance and simple negligence. The employer has the burden of proof to show misconduct.

The claimant was terminated for what the employer called unsatisfactory performance based on progressive discipline. The evidence did establish that the claimant had committed at least four errors over a period of eleven months (July 2009-May 2010) that led to coaching or suspension. On May 27, 2010, the claimant did not completely fill out a meal book when she opened up a slot machine. The claimant said that she was busy and just forgot to do it.

The employer, given the nature of its business, can reasonably expect its employees will comply with all internal procedures designed to insure that the casino games are run in accordance with law. The claimant's performance clearly did not meet the employer's expectations. However,

the claimant's errors appear to be matters of simple negligence as opposed to wanton carelessness. The employer had good business reasons to discharge the claimant. Since there is insufficient evidence of misconduct, benefits will be allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 6, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css