

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER K KARSTEN
Claimant

APPEAL NO. 14A-UI-00018-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT
Employer

**OC: 12/01/13
Claimant: Appellant (2)**

Section 96.5-2-a –Discharge of Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 19, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 27, 2014. The claimant participated personally. The employer participated by Bobbi Adamson, Human Resources Business Partner. The record consists of the testimony of Bobbi Adamson; the testimony of Christopher Karsten; and Employer's Exhibits 1-5.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

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 is a gaming and entertainment business. The claimant was hired on August 14, 2006, as a full-time table games dealer. His last day of work was November 24, 2013. He was terminated on November 25, 2013, for violation of the employer's attendance policy.

The incident that led to the claimant's termination occurred on November 17, 2013. The claimant was absent from work due to personal illness. The employer has a point system that calls for termination on reaching ten points within a twelve-month rolling period. Points are given for occurrences, which include personal illness. The claimant properly reported his illness by calling in prior to the start of his shift.

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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. In order to disqualify a claimant for discharge due to misconduct in absenteeism cases, the employer must show that the final incident of absenteeism was unexcused. This is because an individual can only be disqualified when there is a current act of misconduct. The claimant's final absence was for personal illness properly reported. This is considered an excused absence under Iowa law. The claimant, therefore, was not discharged for a current misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 19, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css