

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER R REED**  
Claimant

**APPEAL NO. 08A-UI-02514-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT LLC**  
**RIVERSIDE CASINO & GOLF RESORT**  
Employer

**OC: 02/03/08 R: 03**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated March 10, 2008, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2008. Mr. Reed participated personally. The employer participated by Ms. Kris Bridges, Human Resource Business Partner.

**ISSUES:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 19, 2007 until November 27, 2007 when he was discharged based upon a revocation of his temporary gaming license by the Iowa Gaming Commission. Mr. Reed was employed as a full-time security officer and was paid by the hour.

At the time of hire Mr. Reed was informed that as a casino employee in the position of a security officer he needed to obtain and maintain licensing through the Iowa Gaming Commission. The claimant was further informed that although a provisional license might be issued that a background check would be done to insure that he had no felonies in his criminal history. The claimant was further informed that falsification or misrepresentation on his application for employment was grounds for discharge. The claimant was issued a provisional gaming license through the Gaming Commission and began employment. On November 27, 2007, the casino was informed through the Iowa State Gaming Commission that Mr. Reed's gaming license had been revoked because the claimant had an unreported felony in his criminal history. Because the claimant's license had been revoked he was no longer employable as a casino worker and therefore was discharged by Riverside Casino and Golf Resort.

It is the claimant's position that although he was aware that he had a felony conviction and had been incarcerated he believed that the felony need not be reported as he had been told previously by an individual at the correctional facility that he had in effect, "served his time." The Gaming Commission questionnaire contains a question regarding convictions that had been expunged, diverted or otherwise administratively handled. Mr. Reed did not indicate that his previous conviction had been removed or handled administratively, either on the Gaming Commission application or his application for employment with Riverside Casino.

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

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does. The evidence in the record establishes that the claimant was given reasonable and sufficient information at the time of hire regarding the necessity that he obtain and maintain licensing through the Iowa Gaming Commission in order to be a casino employee. It was further explained that a background check would be conducted and that if the results of a background check showed misrepresentation or convictions that would cause his gaming license to be revoked, that his employment with the casino would be terminated. Although it appears that the questionnaire from the Gaming Commission was comprehensive in its questioning about previous convictions that may have been expunged or administratively handled, Mr. Reed nevertheless indicated no convictions for a felony although he was aware that he had been previously convicted and incarcerated. When informed by the Gaming Commission that the claimant's gaming license had been revoked, the casino had no alternative but to discharge Mr. Reed as the licensing was a required condition of ongoing employment.

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.

For the reasons stated herein the administrative law judge concludes that the claimant knew or should have known that failure to report a felony conviction on his application with the employer and the Iowa State Gaming Commission could result in the revocation of his gaming license and the termination of employment from Riverside Casino and Golf Resort. The administrative law judge must therefore conclude that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,380.00.

**DECISION:**

The representative's decision dated March 10, 2008, reference 02, is hereby reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,380.00.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css