

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEAH G COCHRAN
Claimant

APPEAL NO: 13A-UI-07435-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

OC: 05/12/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Suspension

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 12, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she was suspended for disqualifying reasons. The claimant participated in the hearing with her attorney, William Horneber. Donna Beck-Williams appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Was the claimant suspended for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2009. She worked as a full-time casino dealer. When the claimant began working, she understood she had to have a gaming license to work for the employer.

An official with the Iowa Gaming Department suspended the claimant's gaming license on April 29, 2013. The gaming official suspended the claimant's gaming license after she was charged with her first OWI and neglect of a minor on April 27, 2013. The claimant understood her charges were a serious misdemeanor and an aggravated misdemeanor. Prior to April 27, neither the claimant's job nor her gaming license were in jeopardy.

Just prior to July 31, the claimant entered into a plea agreement, but had not yet been sentenced by the court. After she is sentenced, the claimant can take the Court's sentence to the gaming official to see if her gaming license will be reinstated.

The employer considers the claimant an active non-working employee until a gaming official decides if her gaming license will be reinstated or terminated.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Misconduct must be connected with the claimant's employment to be disqualifying. In this case, there is no evidence that the conduct for which the claimant was arrested involved any conduct that took place on company property or during work hours. The Iowa Supreme Court has ruled that off-duty misconduct may constitute work-connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). The evidence does not establish that the claimant deliberately violated any of the employer's work rules.

While the employer had no choice but to stop scheduling the claimant to work when her gaming license was suspended, the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of May 12, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's June 12, 2013 determination (reference 01) is reversed. The evidence does not establish that the claimant deliberately violated the employer's work rules during off-duty hours or on the employer's property. While the employer had no choice but to lay off or suspend the claimant when she does not have an active gaming license, the claimant did not commit work-connected misconduct. As of May 12, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs