

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L WETZEL JR
Claimant

APPEAL NO. 11A-UI-01418-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

**OC: 10/31/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 27, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 7, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Pat Brentlinger participated in the hearing on behalf of the employer with witnesses, Karen Johnson, and Linda Carson.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a security shift supervisor from January 28, 2004, to October 31, 2010. He had been warned for inappropriate email usage on June 15, 2010, which was considered his final warning.

On the evening of October 30, 2010, was in the area of the valet parking because of a concern that an intoxicated patron was going to drive his car from the casino area. The claimant properly discouraged the claimant from driving, gave him other options including a ride, and took him that the police would be called if he attempted to leave in the car. The claimant was between the patron and his car. When the claimant reached in the car to retrieve the keys to prevent the patron from driving while intoxicated, the patron shoved the claimant out of his way, entered the car, and drove off.

Management received a report that the claimant had initiated physical contact with the patron by trying to get the keys out of the ignition while the patron was in the driver's seat of the car. After an investigation, the employer discharged the claimant on November 3, 2010, for handling the situation with an intoxicated patron unprofessionally.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about the event on October 30. The testimony was credible and consistent. I cannot conclude that the claimant committed willful and substantial misconduct. There was no repeated negligence equaling willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated January 27, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css