IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-08990-R
OC: 07/31/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Peggy S. Huggins, filed a timely appeal from an unemployment insurance decision dated August 23, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, at the claimant's request, on September 27, 2005, with the claimant participating. The claimant was represented by Christopher Godfrey, Attorney at Law. Gina Vitiritto, Employee Relations Manager, participated in the hearing for the employer, Racing Association of Central Iowa, doing business as Prairie Meadows.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time casino floor attendant from April 28, 1997 until she was discharged on August 2, 2005. The claimant was suspended on July 27, 2005 without pay. The claimant was suspended and then discharged for violating the employer's mutual respect policy contained in the employer's handbook. The employer has a policy in its handbook providing for mutual respect of co-workers and others. The policy promotes teamwork and cooperation and requires that employees treat co-workers and others with respect. The claimant received a copy of the handbook and signed an acknowledgement therefore. The employer also has a policy that provides that conduct contrary to accepted standards of morality or decency can be subject to discharge.

On July 26, 2005, the claimant was discussing with a co-worker, the co-workers interests in becoming a babysitter. During the discussion the claimant talked about the necessity of a clean house and licensing and other matters related to childcare. The co-worker took offense at this and reported this conversation to the employer and alleged that the claimant called the co-worker and her son "skanky." The claimant did not refer to the co-worker as "skanky," but did talk about the co-worker's house and its cleanliness. During this conversation the co-worker indicated to the claimant that she was thinking about quitting to start babysitting and asked the claimant not to tell anybody. The claimant said she would not. However, the claimant shortly thereafter told two other co-workers that the claimant was thinking of quitting to do babysitting. The claimant had heard from others that the co-worker was thinking about quitting to do babysitting. The co-worker has not quit and is still employed by the employer.

On December 23, 2002, the claimant received a written warning called a written notice for a violation of the employer's mutual respect policy. On December 26, 2004, the claimant received a written warning called a written counseling for another violation of the employer's mutual respect policy when she became angry at a cage cashier who rejected the social security card of a winner that was proffered to the cage cashier by the claimant. This necessitated the claimant going back and getting a form filled out by the winner to which the claimant objected and the claimant was angry. The claimant was rude to the cage cashier and received a written warning. On April 24, 2005, the claimant received a verbal coaching session with a written record because she was mad at a co-worker when she approached the co-worker who was in a conversation with a third co-worker and they stopped their conversation when the claimant approached. On November 26, 2004, the claimant received a verbal warning with a written record when the claimant and another co-worker were talking bad about each other on the floor. On August 27, 2004, the claimant received another verbal warning with a written record when the claimant asked the supervisor about a co-worker about whom the claimant had heard was allegedly stealing tips and asked the supervisor about this. The claimant was told not to spread rumors.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on August 2, 2005, after being suspended without pay on July 27, 2005. Since a disciplinary suspension is considered a discharge, the administrative law judge concludes that the claimant was effectively discharged on July 27, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct.

The employer's witness, Gina Vitiritto, Employee Relations Manger, credibly testified that the claimant was involved in a conversation with a co-worker on July 26, 2005, which was inappropriate and to which the co-worker complained. Ms. Vitiritto alleged that the claimant called the co-worker and her son "skanky." The claimant denies that she used the word and the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant did use such a word to the co-worker. However, the administrative law judge is constrained to conclude that the claimant did talk inappropriately to the co-worker

about the cleanliness of her house and other babysitting matters. The claimant testified that the co-worker's demeanor was normal, but the claimant's testimony is not credible, because the co-worker complained immediately about this conversation. Casting additional doubts on the claimant's credibility is the claimant's testimony that she was not aware of the employer's mutual respect policy. The evidence is clear that the employer has such a mutual respect policy and that it is in the handbook and the claimant got a copy of the handbook and signed an acknowledgement. Further reducing the claimant's credibility is the fact that the claimant eventually admitted some warnings in violation of the mutual respect policy, which would indicate that the claimant must have been aware of the employer's mutual respect policy if she got warnings for violations. What finally convinces the administrative law judge that the claimant's conversation with the co-worker was inappropriate was that the claimant herself concedes that the co-worker asked the claimant not to say anything about the potential of the co-worker's quitting to do babysitting. Shortly thereafter the claimant told two other co-workers that the co-worker in question was thinking about quitting to do babysitting. Clearly the claimant violated a statement to the co-worker in question that she would keep this information confidential. At first glance, the claimant's behavior and treatment of the co-worker on July 26, 2005, while inappropriate is not serious. However, because of the numerous warnings set out below, the administrative law judge concludes that the claimant should have known better than to get into such inappropriate conversations and therefore, that the claimant's behavior on July 26, 2005, was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of hire and evinces a willful wanton disregard of the employer's interests and is, at the very least, carelessness or negligence in such a degree of reoccurrence, all as to establish disqualifying misconduct.

The claimant received numerous verbal and written warnings for violations of the employer's mutual respect policy. On December 23, 2002, the claimant received a written warning called a written notice. On December 26, 2004, the claimant received a written warning called a written counseling. On that occasion, the claimant was angry at a cage cashier. The claimant even conceded that she was frustrated with the cage cashier. In addition to these written warnings the claimant received three verbal warnings with written records on August 27, 2004, November 26, 2004, and April 24, 2005. The claimant testified that she did not recall any of these verbal warnings but her testimony is not credible for the reasons set out above and because questions were asked about the verbal warning on August 27, 2004 to the extent that the claimant must have been aware of some kind of verbal warning on that date. The claimant should have been aware, clearly, that the employer was concerned about her relationship with co-workers, and she should have conducted herself appropriately in view of these warnings. She did not and was discharged.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of August 23, 2005, reference 01, is affirmed. The claimant, Peggy S. Huggins, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. .

dj/kjw