

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE A LEIBOLD**  
Claimant

**APPEAL NO. 07A-UI-04213-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE RACING ASSOCIATION LTD**  
Employer

**OC: 04/01/07 R: 04  
Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code section 96.3(7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Dubuque Racing Association filed a timely appeal from the April 19, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 10, 2007. Claimant Melanie Leibold participated. Human Resources Generalist Tammy Schnee represented the employer and presented additional testimony through Table Games Director David Esau, Dual Rate Supervisor Brian Schlarmann, Pit Manager Nikki Werke, Pit Supervisor Mike Peacock, and Pit Manager Rich Schroeder. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received employer's Exhibits One through Eight into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.  
Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Melanie Leibold was employed by Dubuque Racing Association as a full-time Dual Rate Supervisor for Table Games from February 24 2006 until March 28, 2007, when Table Games Director David Esau discharged her for dishonesty and financial irregularities that violated the employer's money-handling/accounting policies.

The final incident that prompted the discharge came to the employer's attention on March 23, 2007. On that day, Table Games Director David Esau learned that Ms. Leibold had attempted to conceal a cash shortage in the "imprest bank" by directing table game dealer Jerry Roach to violate the employer's established money-handling/accounting policy by providing funds from a poker table to make up the shortage in the "imprest bank." The imprest bank was the sizable amount of money that the casino banking cage issued to the poker room to facilitate poker room gambling operations. As a Dual Rate Supervisor, Ms. Leibold was responsible for maintaining and reconciling the imprest bank. As a Dual Rate Supervisor, Ms. Leibold was also responsible

for enforcing the employer's money-handling/accounting policies. The money Mr. Roach provided to Ms. Leibold to make up the shortage came from one of the three funds associated with the poker table: the "rake," the "pot" and dealer "tokens." The rake consisted of a fee the employer assessed players for operating the game and amounted to 10 percent of every pot up to \$4.00. The pot was the accumulated money bet by players. The dealer tokens were the dealer's tips. Mr. Roach provided funds from the pot to make up the shortage in the poker room imprest bank. At the time Ms. Leibold directed Mr. Roach to provide funds from the poker table to make up the shortage in the imprest bank, Ms. Leibold knew this was a violation of the employer's established money-handling policy. Ms. Leibold had been disciplined for previous cash variances and wanted to conceal the imprest bank shortage to avoid being disciplined for the most recent shortage. During the course of the employer's investigation, the employer became aware that Ms. Leibold had made a prior similar request to Mr. Roach, but that Mr. Roach had not fulfilled the prior request. During the investigation, the employer learned that Ms. Leibold had "groomed" Mr. Roach for such inappropriate requests by telling him that she had recently taken \$100.00 from an alleged imprest bank overage and placed it in the dealer tokens. When questioned by the employer, Ms. Leibold admitted to making the most recent request for poker table funds to conceal the shortage in the imprest bank and further admitted that she knew this violated the employer's established policies.

Ms. Leibold established a claim for benefits that was effective April 1, 2007 and has received benefits totaling \$1,388.00.

#### **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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes the Ms. Leibold intentionally violated the employer's money-handling/accounting policy to conceal a shortage in the poker room imprest bank and avoid being disciplined by the employer. While the evidence does not support the employer's assertion that a theft occurred, the evidence is sufficient to establish an intentional, significant financial irregularity, as well as to establish intentional dishonesty on the part of Ms. Leibold. Ms. Leibold was well aware of the employer's money-handling policies, her duty to adhere to those policies, and her duty to enforce those policies vis-à-vis the table dealers she supervised. Not only did Ms. Leibold violate the policies, she induced a subordinate to violate the policies. The evidence indicates that this behavior was part of an ongoing attempt to deceive the employer about cash variances.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Leibold was discharged for misconduct. Accordingly, Ms. Leibold is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Leibold.

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 Ms. Leibold has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Leibold must repay to Iowa Workforce Development. Ms. Leibold is overpaid \$1,388.00.

**DECISION:**

The Agency representative's April 19, 2007, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged. The claimant is overpaid \$1,388.00.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs