

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN K FORBES

Claimant

APPEAL NO: 14A-UI-06021-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE

MESKWAKI BINGO CASINO & HOTEL

Employer

OC: 05/11/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 4, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated at the July 3 hearing. Lucie Roberts, the Human Resource Director; Heather Keen, the claimant's supervisor; and Michael Tobias 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:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2005. The claimant was working full time as a Keno shift supervisor. Before early May 2014 the claimant's job was not in jeopardy.

In early April 2014 the claimant asked Keen what she should do about employees she supervised making insulting comments about the claimant's appearance. The claimant was tired of employees insulting her. Keen advised the claimant to keep a record of the insulting comments. When employees kept on making insulting comments, the claimant finally told them that if they insulted her two more times she would give them a written warning. The claimant did not give employees written warnings for their insulting comments.

In early May 2014 Employee A incorrectly believed the claimant told a guest personal information about A. The claimant had not told a guest any personal information about any employee. Employee A reported that the claimant abused her power as a supervisor by making threats to discipline without good cause, that the claimant told guests personal information about employees, and that the claimant engaged in a sexually explicit conversation with her boyfriend in front of staff and customers. As a result of this complaint, the employer suspended the claimant on May 9 to investigate the complaint.

The claimant denied she told any guest any personal, confidential information about any employee. With the exception of giving employees a warning if anyone continued to insult the claimant, the claimant did not threaten to discipline employees without justifiable reasons. The date the employer indicated the sexually explicit conversation with her boyfriend occurred, was a day the claimant did not work. When the employer investigated, two other employees reported similar issues that the first employee reported. Since three employees reported problems that the claimant denied, the employer decided the three employees were more credible than the claimant.

The employer discharged the claimant on April 14 for her unacceptable behavior at work. Specifically, threatening to discipline employees and telling guests confidential information about employees. The claimant established a claim for benefits during the week of May 11, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer 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).

Based on the evidence presented during the hearing, the claimant did not inform guests about any employee's personal information, she did not threaten disciplinary action without justifiable reasons, and she did not engage in sexually explicit conversations with her boyfriend at work in front of employees and guests. Even though some employees complained about the way the claimant behaved at work, the employer did not have any of these employees testify and none of their written statements were provided at the hearing. The employer may have had justifiable reasons to discharge the claimant, but the claimant did not commit work-connected misconduct. As of May 11, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's June 4, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 11, 2014 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/can