

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW R POPPY**  
Claimant

**APPEAL NO. 09A-UI-08432-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**OC: 05/03/09**  
**Claimant: Appellant (1)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 3, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 29, 2009. Claimant participated. Employer participated by Sarah Frank, Benefits and Training Supervisor; Linda Tanner, Food and Beverage Manager; Nick Pinkle, Food and Beverage Supervisor; and Jason True, Human Resources Manager. The record consists of the testimony of the following individuals: Sarah Frank; Linda Tanner; Nick Pinkle; Jason True; and Andrew Poppy and Employer's Exhibits 1-5.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates the Rhythm City Casino in Davenport, Iowa. The claimant was employed as a line cook and started working for the employer on February 13, 2006. The claimant and his immediate supervisor, Nick Pinkle, were involved in an incident. The claimant discussed the incident with two of his co-workers, seeking advice on what to do. The claimant decided to report the incident to Linda Tanner, who was next in the chain of supervision. Ms. Tanner then informed human resources and the human resources manager, Jason True, started an investigation of the incident.

On April 28, 2009, Mr. True met with the claimant to discuss the matter. During their conversation, the claimant revealed that he had talked to two co-workers about the situation. Mr. True told the claimant that he had violated the company's confidentiality policy. As the conversation came to an end, the claimant was specifically told not to discuss the investigation with any co-worker.

The claimant then received a text message from a co-employee asking how the meeting had gone with Mr. True. The claimant sent two text messages back to the co-employee. In the first text message, the claimant said that he and Nick needed to talk and made mention of other difficulties he was having. In the second text message, he told the co-worker that she had not heard it "from him."

The co-worker reported the text messages to the employer. On April 30, 2009, Linda Tanner and Sarah Frank discussed the text messages with the claimant. He acknowledged that he had sent them. The claimant was then terminated for violating the company's confidentiality policy.

## **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.

The evidence in this case established that the claimant had reported to management an incident with his supervisor and that as a result of that information, the employer had commenced an investigation. The claimant had a conference with the human resources manager on April 28, 2009, and during that conversation the claimant was specifically told that he was not to discuss the investigation with any co-workers. Mr. True testified that it was essential that no co-employees have prior knowledge of the investigation because it might taint their view of the situation and in particular their opinion of the supervisor. The claimant therefore knew about the confidentiality policy of the employer in general and its application to this situation in particular.

The claimant acknowledged that after his conversation with Mr. True he received and then responded to a text message from a co-employee. Although the claimant said that the text messages were not about the investigation, the text messages were read verbatim into the record. The administrative law judge asked to hear the messages twice and there was no question that the claimant gave information to the co-worker about the investigation, albeit with few details. The text messages were a deliberate violation of Mr. True's instructions not to discuss the investigation with any co-worker. The fact that the claimant told the co-worker in the second text message that she "did not hear it from him" is further evidence that the claimant knew that what he was doing was contrary to what he had been told.

The employer was presented with an allegation from the claimant concerning his supervisor and was attempting to investigate the matter further. The employer has an interest in responding to complaints from its employees and investigating those complaints thoroughly and fairly. The claimant deliberately disregarded the employer's interest by texting a co-employee twice about the investigation. Misconduct has been established and benefits are denied.

**DECISION:**

The decision of the representative dated June 3, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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