

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

CONSTANCE J MEJIA
729 – 24th ST
EAST MOLINE IL 61244

IOC SERVICES LLC
1641 POPPS FERRY ROAD APT B-1
BILOXI MS 39532-2226

Appeal Number: 05A-UI-04217-BT
OC: 03/27/05 R: 04
Claimant: Appellant (2)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Constance Mejia (claimant) appealed an unemployment insurance decision dated April 18, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from IOC Services (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2005. The claimant participated in the hearing. The employer participated through Jason True, Human Resources Manager. Employer's Exhibits One through Three were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time slot attendant from November 3, 1995 through March 29, 2005. She was discharged for repeated violation of company policy. The claimant had received ten disciplinary warnings from March 11, 2004 through March 11, 2005. Three of those warnings were for a "Fourth Fill Violation". When slot attendants open up a slot machine, they are required to document in a "meal book", the time and reason as to why the door was opened. When the slot machine is being filled, the attendant is required to scan the meal book and if it is the fourth time the machine is being filled, the attendant is required to call a slot technician so that the machine can be checked as to proper performance and other potential problems. The claimant was on a final warning for this particular violation and on March 25, 2005, she failed to either call the slot technician or failed to wait until that individual arrived to check the machine. Computer generated records are also issued as to when the machines are filled. It was determined the claimant violated this policy but the employer could not provide detailed information as to exactly how it was discovered. The claimant was trying to be careful in performing her job duties as she did not want to be fired after her ten years of employment with the employer. The claimant's job duties kept her quite busy during her shift.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for a policy violation when she failed to either call a slot technician to the slot machine which she was filling or failed to wait for that person's arrival. The employer was unable to provide information as to exactly how the violation was discovered. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). Without additional evidence provided by the employer as to the specific incident and without any evidence of wrongful intent, the final act for which the claimant was discharged does not amount to disqualifying misconduct. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated April 18, 2005, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/s