

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE L WILLIAMS
Claimant

APPEAL NO: 13A-UI-10997-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATFISH BEND CASINOS II LLC
Employer

OC: 09/01/13
Claimant: Respondent (4)

Section 96.5-2-a – Discharge
871 IAC 24.32(41) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 24, 2013, reference 01, that held it failed to establish misconduct in the discharge of claimant on September 3, 2013, and benefits are allowed. A telephone hearing was held on October 21, 2013. The claimant participated. Steve Morley, HR Director, and Sharon Rocha, Slot Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer as a full-time slot attendant from May 1, 2013 to September 2. The claimant was required to have an Iowa gaming license as a condition of employment. She received a Notice of Probation with conditions should she receive any further charges her license would be denied.

On August 30 a DCI agent issued claimant a citation for driving while barred that was given to claimant when she reported to work on September 2. Although claimant had been charged and sentenced on July 24 with operating a non-registered vehicle, she failed to report it to IRGC.

Claimant was so upset with receiving the September 2 citation, she told a supervisor she was leaving knowing it would be held against her attendance record. The employer considered this act job abandonment and a voluntary quit of employment.

Claimant called in an absence from work the following day to supervisor Rocha. Rocha told claimant she had been terminated due to job abandonment. The IRGC notified claimant on September 16 her gaming license is denied and she is barred from working at any gaming license facility.

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 administrative law judge concludes employer established claimant was discharged for misconduct effective September 16, 2013 due to losing her gaming license.

While claimant left early on September 2 and was calling in an absence the following day, the employer did not discharge claimant for attendance issues but concluded she voluntarily quit due to job abandonment. The facts do not support job abandonment as the employer offered no written policy that leaving work early is job abandonment.

Claimant could have worked until September 16 with a valid gaming license. She is eligible for unemployment during this period. The loss of the gaming license cannot be ignored. Although claimant had adverse attendance issues on September 2 and 3, the employer chose not to discipline her for this reason but consider it job abandonment. Claimant is eligible for benefits from the effective date of claim to the loss of her gaming license. The intervening period is like an employment suspension or layoff.

Iowa Code section 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. . . .

The administrative law judge further concludes claimant is overpaid unemployment benefits from September 16, 2013 through the four-week period ending October 12, 2013 totaling \$1,696.00 due to the disqualification imposed in this matter.

Although claimant committed no act of fraud or misrepresentation as to the overpayment, there is no relief from repayment as the employer participated in department fact finding.

DECISION:

The department decision dated September 24, 2013 reference 01 is modified. The claimant was discharged for misconduct on September 16, 2013. Benefits are allowed from the effective date of the claim to September 16, and then benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid \$1,696.00 for the four weeks ending October 12, 2013.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css