

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CELIA Q GREINER**  
Claimant

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**APPEAL 15A-UI-00394-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/21/14  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 7, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2015. Claimant participated. Employer participated through, Megan Sease, Human Resources Specialist.

**ISSUE:**

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a table games supervisor beginning on November 29, 2004 through December 16, 2014 when she was discharged. The claimant volunteered her resignation after learning she would be discharged.

On the night of December 1 into the early morning hours of December 2 a patron, who was a former employee, left an expensive set of headphones lying on the chair next to where he had been sitting when he left the casino. He called later and asked that they be returned to him. The employer could not locate the headphones in the lost and found area so they began an investigation which included interviewing employees and reviewing surveillance footage. As part of the investigation the claimant was interviewed multiple times. She denied knowing anything about the location of the headphones despite surveillance video showing her taking them off the podium where another employee had laid them and trying to put them down the back of her pants under her jacket. Later additional surveillance showed the claimant placing the headphones in a Ziploc baggy and taking them up to the office she shared with the other supervisors. The employer searched the supervisors' office and was not able to locate the headphones anywhere in the office.

A few days later surveillance video showed the claimant with a pile of blue cleaning cloths in her hands. She walked directly to the podium, reached down underneath the podium and put something on the bottom shelf. She then put the blue rags in another location. Almost immediately after doing that, she told an employee that they should search the podium again for the headphones. The whole podium had already been thoroughly searched more than once. The headphones were then found on the lower shelf of the podium. The claimant put the headphones back on the shelf as she had possession of them the entire time. The claimant was dishonest with the employer on multiple occasions about the headphones. As a member of management she owed it to her employer to be honest in her dealing with them. When confronted by the employer with what they had seen on the surveillance video the claimant had no credible or coherent explanation.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for disqualifying misconduct.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention to voluntarily quit. She only did so when she learned she would be discharged. This case is properly characterized as a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant was discharged for being dishonest with her employer when they conducted the investigation into what happened with the patron's lost headphones. The claimant had possession of the headphones and was not honest with the employer about where she had put them. Despite the fact that the claimant had no prior warnings for any similar behavior, the employer did establish that the claimant was dishonest on multiple occasions during the course of the investigation. Claimant's repeated dishonesty is work connected misconduct that rises to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The January 7, 2015 (reference 01) decision is affirmed. The claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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