

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY S DAVIS**  
Claimant

**APPEAL NO: 12A-UI-09462-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAC & FOX TRIBE  
MESKWAKI BINGO CASINO & HOTEL**  
Employer

**OC: 07/08/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 30, 2012, reference 01, that held she was discharged for misconduct on June 4, 2012, and which denied benefits. A telephone hearing was held on August 30, 2012. The claimant participated. Lucie Roberts, HR director, and Connie Thompson, hotel administrative assistant, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time housekeeper/utility person on January 28, 2009, and last worked for the employer on May 27, 2012. The claimant received an employee handbook that contained the policies of the employer. The claimant knew the employer had a drug testing policy and she was subject to random testing. Claimant also was required to have a gaming license in order to work.

The claimant was one of 60 employees randomly selected by a computer process for drug testing on May 27, 2012. She tested positive for THC (marijuana). The test result was confirmed by an independent lab, and the claimant was so notified. The employer suspended claimant pending further investigation. Claimant admitted in this hearing she had been using marijuana.

The Gaming Commission suspended claimant's gaming license on June 4, and revoked it on June 25. The employer discharged claimant because she could no longer work as an unlicensed employee.

## 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 the employer has established that the claimant was suspended on June 4, and discharged for misconduct in connection with employment on June 25, 2012, for a violation of the drug policy that caused her to lose her gaming license.

The employer is not subject to Iowa drug testing law (I.C. 730.5). Claimant knew she was required to have a gaming license to be employed, and she was subject to random drug testing. Her decision to use THC (marijuana) was volitional, which resulted in a positive test, which led the Gaming Commission to suspend and then revoke her license. Claimant's decision to use marijuana, which caused her to lose her gaming license, constitutes job-disqualifying misconduct.

**DECISION:**

The department decision dated July 30, 2012, reference 01, is affirmed. The claimant was suspended on June 4 and discharged for misconduct on June 25, 2012. 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 she is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw