

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A FROST
Claimant

APPEAL NO. 07A-UI-00189-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 12/03/06 R: 04
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 26, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 23, 2006. The claimant participated. The employer participated by Ms. Sara Frank.

ISSUE:

The issues in this matter are whether the claimant was discharged under disqualifying conditions and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record finds: The claimant was employed by the captioned company, doing business as Isle of Caprice Casino, from August 2003 until August 14, 2006. He was separated for failure to maintain licensing through the Iowa Racing and Gaming Commission as required for the claimant to perform his duties as a security officer. Mr. Frost was aware that attaining and maintaining licensing through the commission was a prerequisite and ongoing condition of employment. Mr. Frost's license through the Gaming Commission was suspended when the claimant was arrested and subsequently convicted of second offense driving under the influence. The claimant did not appeal his suspension of his license by the Gaming Commission although he was aware that he must maintain a valid gaming license/badge to remain employed.

REASONING AND CONCLUSIONS OF LAW:

Mr. Frost was separated from his employment with the Isle of Caprice Casino after he failed to maintain a required licensing that was necessary for him to continue to be employed by the casino. Mr. Frost was aware of the necessity that he maintain his gaming license but failed to do so. The claimant's conduct was disqualifying, the claimant's arrest and subsequent

conviction was due to behavior that was within the claimant's control. Thus, his off-duty conduct caused his loss of licensing required for him to maintain his employment with the casino.

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 that misconduct has been established. Accordingly, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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 claimant is overpaid unemployment insurance benefits in the amount of \$2,030.00. Pursuant to Iowa Code section 96.3-7 because a decision has determined the claimant is ineligible to receive benefits due to being discharged under disqualifying conditions.

DECISION:

The representative's decision dated December 26, 2006, reference 01, is hereby reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided

he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$2,030.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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