

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIA M VELASQUEZ
Claimant

APPEAL NO. 09A-UI-15037-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES
Employer

**Original Claim: 08/23/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tia Velasquez (claimant) appealed a representative's September 28, 2009 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with IOC Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 5, 2009. The claimant participated personally. The employer participated by John Stanford, Employee Relations Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 31, 2007, as a full-time food and beverage server. The claimant signed for receipt of the employer's handbook on May 31, 2007. At the time the claimant was hired, she understood that she had to have a valid gaming license in order to work for the employer. The claimant lost her license once before during her employment and was not able to work for a period of time until she obtained a new license.

The employer issued the claimant a written warning on July 8, 2009, for violating policies and procedures. On July 20, 2009, the employer issued the claimant two written warnings for rudeness and insubordination. The claimant refused to sign for receipt of the warnings after being requested to do so. The employer notified the claimant that further infractions could result in termination from employment.

On August 24, 2009, the Gaming Commission suspended the claimant's gaming license after she was charged with criminal activity. The employer ended the claimant's employment on August 24, 2009, for failure to maintain a valid license.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She failed to follow instructions regarding rudeness to other employees, failed to follow policies and procedures, and failed to sign for receipt of warnings.

The failure of an employee to maintain a license that she must have to perform the duties of the job is misconduct. The claimant's license was suspended. Her subsequent termination from employment was for misconduct. She is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 28, 2009 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw