

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MARILYN G BRYANT  
1885½ JACKSON ST  
DUBUQUE IA 52001**

**DUBUQUE RACING ASSOCIATION LTD  
PO BOX 3190  
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-04849-JTT  
OC: 04/03/05 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Marilyn Bryant filed a timely appeal from the April 25, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 25, 2005. Ms. Bryant participated. Human Resources Generalist Tami Schnee represented the employer. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marilyn Bryant was employed by the Dubuque Greyhound Park & Casino as a full-time security officer through February 26, 2005, when Security Director Tom Hiatt discharged her for misconduct. Ms. Bryant had started as a part-time security officer on April 23, 2004, and had commenced full-time employment in July 2004.

The final incident that prompted the discharge came to the employer's attention on February 25, 2005, when the Iowa Racing and Gaming Commission issued a Notice of License Denial to Ms. Bryant. Prior to February 25, Ms. Bryant had worked under a temporary security license that was subject to being revoked if the State's background check indicated she was ineligible for a security license. The State revoked Ms. Bryant's security license because she failed to disclose a 1995 felony theft conviction for wrongfully obtaining public assistance, failed to disclose an August 25, 2004, conviction for providing false information to a law enforcement officer, and because she failed to disclose that Minnesota had issued a warrant for her arrest in 2004. The Notice of License Denial indicated on its face that Ms. Bryant was "barred from working at any pari-mutual racetrack or gaming facility licensed to operate in the state of Iowa."

After the employer learned of the license denial, it reviewed Ms. Bryant's employment application. In response to the question on the application regarding whether she had previously been convicted of a crime or pleaded guilty to a crime, Ms. Bryant had indicated she had not. The employment application indicated on its face that "all employees must be approved and licensed by the Iowa Racing and Gaming Commission." The application also indicated on its face that "any false statements in this application shall be sufficient cause for rejection or dismissal."

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Bryant was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Ms. Bryant falsified her employment application, and falsified her application for the security license that was necessary to acquire and maintain the employment. Ms. Bryant's misconduct was significant in that she intentionally failed to inform her employer or the State licensing commission of a prior conviction for felony theft. Ms. Bryant's actions were in willful and wanton disregard of the employer's interests and standards of conduct the employer had a right to expect of its employees. See 871 IAC 24.32(1)(a). Ms. Bryant was discharged for misconduct. Accordingly, Ms. Bryant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount.

DECISION:

The Agency representative's decision dated April 25, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times here weekly benefit allowance

jt/kjw