

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELVIR MUSEDINOVIC
Claimant

APPEAL NO. 12A-UI-02941-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC BLACK HAWK COUNTY INC
Employer

**OC: 02/12/12
Claimant: Appellant (5)**

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Elvir Musedinovice, filed an appeal from a decision dated March 23, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 9, 2012. The claimant participated on his own behalf. The employer, IOC, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Elvir Musedinovice was employed by IOC from August 11, 2010 until January 25, 2012 as a full-time maintenance technician. He had received a warning in late 2011 for using his personal cell phone while on duty. On January 24, 2012, his supervisor, Dan Pitip, approached him while he was again on his cell phone and reminded him the “cameras were watching.” Mr. Musedinovice said, “I don’t give a fuck.” The supervisor said, “whatever” and walked away.

Shortly thereafter the claimant was summoned to the security office where he was escorted out of the casino. The next day he was called by Director of Facilities Norm Smith and told he was fired.

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.

It is apparent the claimant was aware of the cell phone policy but elected to ignore it. He asserted that "everyone did it" but only he appears to have been warned about it in the past. The supervisor was only notifying him the surveillance cameras could see him and his response was insubordinate, profane and disrespectful. It showed a disregard for the employer's rules and insubordination to the supervisor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 23, 2012, reference 01, is modified without effect. Elvir Musedinovic did not quit but was discharged for misconduct. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs

