

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M WHITE
Claimant

APPEAL NO. 13A-UI-13229-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WINNEBAGO TRIBE OF NEBRASKA
WINNAVEGAS**
Employer

**OC: 10/27/13
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Christine White, filed an appeal from a decision dated November 25, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 19, 2013. The claimant participated on her own behalf. The employer, Winnavegas, participated by did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Christine White was employed by Winnavegas from September 15, 2012 until October 29, 2013 as a full-time security guard. The security office maintains the lost and found. If an item is unclaimed for 15 days then it may be taken by the security guards.

Ms. White had taken a large handbag containing blue jeans from the lost and found before the 15 days were up. A co-worker urged her to do so because she was the only one the jeans would fit. On October 29, 2013, the owner of the item came to claim it but it was not there. The surveillance video was viewed and it showed Ms. White taking the item. The supervisor Jessie told her if she returned the item she would not be charged with theft. She returned the item and then was discharged for violation of the policy.

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 claimant knew the policy which requires an item be unclaimed for at least 15 days before one of the security guards can take. Whatever other employees may have been doing, or whether she was urged to violate the policy by a co-worker, does not relieve her of responsibility for violating a known company rule. 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 unemployment insurance decision dated November 25, 2013, reference 01, is affirmed. Christine White is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs