

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A GINGERICH**  
Claimant

**APPEAL NO. 10A-UI-04037-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

**Original Claim: 02/14/10  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

James Gingerich filed an appeal from a representative's decision dated March 8, 2010, reference 01, which denied benefits based on his separation from Riverside Casino and Golf Resort (Riverside). After due notice was issued, a hearing was held by telephone on April 29, 2010. Mr. Gingerich participated personally. The employer participated by Trisha Murphy, Human Resources Business Partner, and Kurt Lesback, Director of Facilities.

**ISSUE:**

At issue in this matter is whether Mr. Gingerich was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gingerich was employed by Riverside from May 30, 2006 until February 15, 2010 as a full-time maintenance electrician. He was discharged for not following procedures. He was discharged as a result of his failure to follow "lock out-tag out" procedures on February 15.

Before working on electrical equipment or devices, electricians are required to lock out power to avoid injury. Mr. Gingerich was performing trouble shooting on a wall sign when he disconnected some wires without first locking out the power. Although his tester indicated there was power present, he believed from his visual inspection that there was no power to the area where he disconnected the wires. Due to his failure to lock out the power, he was discharged the same day. He did not have any history of not locking out power before performing electrical work.

In making the decision to discharge, the employer considered the fact that Mr. Gingerich had received two other warnings during the course of his employment. He received a warning on June 5, 2008 because he had not been checking wiring connections on lights before energizing them for stage shows. It was discovered that approximately one-third of the connections were cracked. He received a warning on February 8, 2010 because he failed to supply a coworker

with a lock although he had several at this work station. He told the coworker he would try to find him a lock, but the coworker found one on his own. It turned out that he obtained the wrong type of lock.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that substantial misconduct has not been established. There is no doubt but that Mr. Gingerich was in violation of the employer's "lock out-tag out" procedures on February 15, 2010. However, based on his visual observations, he had a good-faith belief that there was no power flow to the area where he disconnected the wires. For this reason, the administrative law judge is inclined to view the incident as a good-faith error in judgment and not an intentional disregard of the employer's standards.

The warning of June 5, 2008 was due to an isolated instance of simple negligence. There were no prior incidents of him not performing required work and no further such conduct between the date of warning and February 15, 2010. Although Mr. Gingerich did not immediately provide a lock to his coworker on February 8, 2010, he did tell him he would locate one for him. It was through no fault of his own that the coworker chose to use an inappropriate lock before he got back to him. The administrative law judge is not persuaded that he refused to give his coworker a lock.

After considering all of the evidence, the administrative law judge concludes that the employer's evidence established only that Mr. Gingerich was an unsatisfactory employee. It did not establish a pattern or practice of disregarding the employer's interests or standards. While the employer may have had good cause to discharge him, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated March 8, 2010, reference 01, is hereby reversed. Mr. Gingerich was discharged by Riverside, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw