

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES GRIMSLEY SR**  
Claimant

**APPEAL NO: 06A-UI-09576-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 08/27/06 R: 01**  
**Claimant: Respondent (2)**

Section 96.5-2-a - Discharge for Misconduct  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Ameristar Casino Council Bluffs, Inc. (employer) appealed an unemployment insurance decision dated September 20, 2006, reference 01, which held that James Grimsley Sr. (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2006. The claimant participated in the hearing. The employer participated through Kris Adams, Human Resources Manager; Roy Nicodemus, Banquet Manager; and Lucy Reed, employer representative. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time banquet house person from September 2, 1999 through August 30, 2006 when he was discharged for repeated insubordination. He received his first written warning for insubordination and a negative attitude on March 16, 2006. The claimant was upset about his hours and instead of following the chain of command, he complained to other employees and said how angry he was at the manager. Two weeks prior to June 28, 2006, the employer told its employees they would have to wear a costume for a renaissance festival party the employer was holding. The claimant never indicated he would not wear the costume. On June 28, the employer gave the claimant the costume, which consisted of a hat and a shirt, but he refused. He thought it looked stupid on him so would not wear it. He was sent home leaving the team short staffed for the party and a written warning was subsequently issued.

He was suspended on August 18, 2006 pending further investigation about inappropriately touching a female team member. The team member said that on August 16, 2006, the claimant

touched her butt and grabbed her shoulders. She became frightened because he would not let her go and she reported it to the employer. The claimant admitted touching her shoulders but said he was only being friendly. He was allowed to return to work with a final written warning. The incident prompting the discharge occurred on August 25, 2006 when the claimant became angry because he was asked to set up for an event and did not think it was his job to do it. The claimant said it should have been done by other employees and argued with the sports bar manager. He refused to do the work because he claimed he did not have a work order. The claimant finally did the work but slammed tables as he was doing it. He glared at another female employee who had given him directives and intimidated her to the point that she would no longer work with him. The claimant was discharged on the following day.

The claimant filed a claim for unemployment insurance benefits effective August 27, 2006 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged due to repeated insubordination, lack of courtesy and a poor attitude. He had been placed on a final warning and knew his job was in jeopardy but became angry about a job order. His final actions demonstrate a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated September 20, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was

discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,004.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs