

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW B OLSON

Claimant

APPEAL NO: 17A-UI-11093-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO COUNCIL BLUFFS

Employer

OC: 10/01/17

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 25, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 15, 2017. The claimant participated in the hearing with his father/non-attorney representative Dean Olson. Heather Davis, Human Resources Representative; Ellie McNeil, Slot Performance Manager; Jennifer Zelenka, Shift Manager; and Jacqueline Jones, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven and Claimant's Exhibits C-1 through C-7 were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time slot technician II for Ameristar Casino Council Bluffs from October 24, 1998 to September 27, 2017. He was discharged for failing to follow the employer's instructions after being warned.

On March 10, 2017, the claimant received a verbal warning in writing for training another team member on a task outside his position without permission March 8, 2017. The claimant had expressed concern about having extra time at the end of his shift and Slot Performance Manager Ellie McNeil told the claimant to call her when that happened. When Ms. McNeil reminded the claimant of that conversation after he trained the other employee, the claimant stated he was going to do what he thought needed to be done. Ms. McNeil again told the claimant to bring his concerns to her before acting in the future. On March 9, 2017, the claimant was still upset about the conversation with Ms. McNeil and told a supervisor he "got (his) ass chewed" for working with the other technician. He raised his voice and used inappropriate language when speaking to the supervisor. When Ms. McNeil met with the claimant he "was very insistent that (he) would continue to work with the tech on his own time and (Ms. McNeil) had no say in what (he does) on his own time" (Employer's Exhibit One). Ms. McNeil agreed

she could not tell him what to do on his own time but told him it was “not acceptable to complete work training, using confidential work information, outside of company-paid hours” (Employer’s Exhibit One). During the conversation, the claimant again raised his voice and used inappropriate language (Employer’s Exhibit Two). The parties agreed the claimant would complete “a list of additional tasks that (the claimant) was looking to get completed so that leadership could delegate them to other techs” (Employer’s Exhibit One). On March 10, 2017, the claimant “spent a significant amount of time typing a detailed, two-page sheet of all of the things (the claimant) did” (Employer’s Exhibit One). The verbal warning in writing stated that was a misuse of company time because the claimant was only to document “the additional items needing to be worked on” (Employer’s Exhibit One).

On April 24, 2017, the claimant received a written warning after the employer delegated time for the claimant to repair bill validators instead of performing his normal tasks. The claimant often talked to the employer about not having enough time to get his work done and consequently the employer set aside time for him to work on the bill validators. Instead of doing so, however, the claimant opted to take over a repair job from another employee who should have been able to perform the repair without assistance. The claimant was in the shop from 4:58 a.m. to 5:54 a.m. and logged the television into the internet kiosk program to listen to music, reviewed emails and talked to another tech without any activity during the first hour of his shift (Employer’s Exhibit Two). The claimant did not call Ms. McNeil to ask what to do about helping the other employee. When Ms. McNeil questioned him about his decision, the claimant stated it was a “judgment call” regarding helping another employee and doing his own job and said if he thinks another tech needs help he was going to help him. The other tech did not request assistance from the claimant. Ms. McNeil instructed the claimant again April 24, 2017, to take his issues and concerns to leadership before performing tasks other than those assigned to him.

On May 29, 2017, the claimant received a final written warning after he was observed in the technician shop removing a thumb drive from the workshop and company computer. The employer does not know if the thumb drive belonged to the claimant or the employer but when the next shift came in information was missing from where it normally was on the computer system (Employer’s Exhibit Three). When the employer met with the claimant he stated the information he removed was personal or outdated work information (Employer’s Exhibit Three). The employer explained that even outdated information still belonged to the employer and it was not for the claimant to decide what was needed by the team (Employer’s Exhibit Three). The claimant then stated the employer “could have it all back” (Employer’s Exhibit Three). The claimant had also removed some information to his locker and that was discovered to contain current information and training materials (Employer’s Exhibit Three). When the employer asked the claimant to return the thumb drive, he deleted the entire file after asking if the employer wanted him to format it.

On September 26, 2017, Ms. McNeil and another manager “measured and taped the slot bank locations” so employees could use the markings to move the slot machines back to their proper positions after new carpet was installed (Employer’s Exhibit Seven). They posted the instructions for the next shift’s tasks in the slot repair shop with each task assigned to a specific employee (Employer’s Exhibit Seven). The claimant was assigned to wire the slot machines. At 8:45 a.m. September 27, 2017, the claimant told Supervisor Jessica Vance he “did not agree with the location of the markings (designating where to put the machines) and that he made adjustments. He stated that he felt the machines would be too close to the bar tile and that he made comparisons to the first deck bar. A significant and unnecessary amount of time was spent discussing thoughts and re-measuring rather than completing the assigned tasks and then passing on the concerns and suggestions to leadership. The team then worked on placing slot machines in the locations that he determined to be necessary. (The claimant’s) assigned

task for the night was 'wire slots as they get placed and taking floor calls,' and this was not completed on any of the five banks of slot top banks that had been placed" (Employer's Exhibit Seven). The claimant did not complete the wiring on any of the five banks of slot machines assigned to him that night and stayed one hour and 50 minutes after the end of his shift without authorization working on the wiring (Employer's Exhibit Seven). The next shift spent six hours moving the slot machines.

After reviewing the claimant's previous warnings for failing to follow the employer's instructions and the fact he was on a final written warning the employer terminated the claimant's employment September 27, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant repeatedly substituted his judgment for that of the employer. Despite three warnings about doing so the claimant persisted in failing to follow the directions of the employer. While the claimant may believe his decisions were better than those of the employer, that is not the point. The issue is not whether the slot banks were better placed where the claimant decided but that he refused to follow the instructions of the employer. He was not assigned to place the slot machines but to wire them and he failed to do so.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 25, 2017, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn