

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICK J MASON**  
Claimant

**APPEAL NO. 06A-UI-10645-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 10-01-06 R: 01**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 24, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 15, 2006. Claimant participated. Employer participated through Shila Kinsey and Patty Reeves, buffet manager and immediate supervisor, and was represented by Beth Crocker of Unemployment Services LLC.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time busser from September 23, 2003 until October 3, 2006, when he was discharged. On September 24 a server coworker, Joe, asked claimant to change the tubs, as was his job. Claimant called him a “whiny bitch” in the presence of Reeves and while guests were right outside the door. Joe was disciplined for his part in the confrontation but was not fired since he had no previous disciplinary history. Claimant had been disciplined on January 21, 2006 for inappropriately touching a female coworker with a beer bottle (Employer’s Exhibit 1, page 2) as well as other dissimilar issues.

**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:

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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Claimant's name calling towards a coworker, whether or not in front of guests and especially because of his history of disrespectful treatment of coworkers and his supervisor, was misconduct. Benefits are denied.

#### **DECISION:**

The October 24, 2006, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw