

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH A KROHN
Claimant

APPEAL NO. 07A-UI-04014-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

**OC: 03/25/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ameristar Casino Council Bluffs, Inc. (employer) appealed a representative's April 11, 2007 decision (reference 01) that concluded Judith A. Krohn (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2007. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf with Michael Moriarty and Shila Kinsley as witnesses. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 12, 1996. The claimant worked as a full-time executive host. Moriarty was the claimant's most recent supervisor.

To evaluate an executive host's performance, the employer sends surveys to players. The employer expects an executive host to receive an overall 9.0 rating on questions asked on the survey as an indication the executive host is performing satisfactory work.

On August 16, 2006, the claimant received a written warning because survey results from November 2005 and April 2006 indicated survey scores of less than 9.0 both times. Also, the claimant's April survey results had not improved since November 2005. The claimant understood in August 2006 her job was in jeopardy.

Although the claimant worked 8:00 a.m. to 4:00 p.m., when there was a party that her players attended, she worked at the party. Since the claimant did not regularly work nights, she made sure she contacted her players at least once every six weeks. In addition to evaluating her work performance from the surveys that were returned, the claimant was required to call all of her

players, meet certain production guidelines, make a minimum of hotel reservations for her players, and receive satisfactory comments from players that the employer randomly called.

At the claimant's last quarterly review, she met her production goals and exceeded the number of hotel reservations she was required to make. The employer's records indicate the claimant only called 98.5 percent of her players instead of 100 percent. Part of the problem was the employer's filter program that Moriarty incorrectly told the claimant she could rely upon to meet the 100 percent goal. In an attempt to meet and greet all of her players, the claimant asked to be called when her player came to the casino. In February 2007, the claimant started carrying a device that let her know the location of all of her assigned players.

In February 2007, the claimant learned players had been sent a survey. While the claimant could not solicit the return of her players returning the surveys, the employer encouraged her to tell her players the importance of returning the surveys. Of the 242 surveys sent, 62 for the claimant were returned. Based on a minority of all her players, the survey results did not show any improvement in the claimant's ratings since April 2006 and November 2005. The survey results again were less than 9.0.

The other executive host, who was still on probation, was counseled about his survey results that were also less than 9.0. On March 16, 2007, the employer discharged the claimant for neglecting her job duties because her survey results in February 2007 had not shown any improvement and she had not called 100 percent of her players.

The employer has not replaced the claimant. As of the date of the hearing, the employer only has one executive host even though the employer previously had the claimant and two other executive hosts working.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established a business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally failed to perform her job duties. First, the facts do not establish that the claimant ever received a 9.0 rating on the surveys the employer relied

upon. If the claimant was not doing her job satisfactory, it is surprising that her players did not report problems during random phone calls the employer made. Even if the claimant did not call all of her players, the facts reveal the claimant made reasonable efforts to do this task satisfactorily. The facts do not establish that the claimant committed work-connected misconduct. As of March 25, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 11, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 25, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw