

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOY CHAMBERS**

Claimant

**APPEAL NO: 14A-UI-01178-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**

Employer

**OC: 01/05/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 27, 2014, 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 February 24, 2014. The claimant participated in the hearing. Tammy Spearman, Team Relations Manager; Heather Nelson, Training Manager; and Lesley Buhler, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Eleven 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 warehouse person for Ameristar Casino Council Bluffs from March 12, 2002 to December 27, 2013. She was discharged for use of profanity and name-calling toward a co-worker.

On December 27, 2013, the claimant had loaded her two carts with beer to take to the boat from the warehouse. While she was making a run to the boat, co-worker Luis Buenrostro unloaded one of her carts. When she came back she asked him "what the hell" he was doing and he replied he was loading her cart onto his cart. The claimant replied that was "fucking retarded" and "fucking stupid" and concluded by telling him to "stay the fuck away" from her. Mr. Buenrostro shrugged his shoulders and stared at the claimant. The claimant told him they had 30 minutes to finish that task and he had just wasted 45 minutes harassing her by unloading her cart. She then went into the cooler, saying, "This is stupid. This is so stupid," to no one in particular, and spoke to Warehouse Person Rick Rocha. She told him what happened although he had heard parts of the outburst. The claimant stated it was "just retarded to unload a cart just to get (her) going and have to load it again." Mr. Buenrostro had harassed the claimant by calling her a "bitch, stupid bitch, old bitch and bossy old bitch" over the last several months and complained that she made more money than he did even though she had worked for the employer nine years longer than he had.

The claimant received a documented verbal warning September 11, 2013, regarding her negative attitude and demeanor in the workplace (Employer's Exhibit Six). When that warning was issued the claimant brought up her treatment in the workplace by Mr. Buenrostro to Human Resources but did not complain to Human Resources about name-calling or the work environment at any other time and that department believed the problem had been resolved.

After Mr. Buenrostro reported the incident to Director of Finance Paul Czak he was taken to Human Resources where he told Training Manager Heather Nelson what happened between he and the claimant and provided a written statement (Employer's Exhibit Four). Ms. Nelson also spoke to Mr. Rocha, who was named as a witness by Mr. Buenrostro but who was reluctant to get involved for fear of reprisal and took a written statement from him (Employer's Exhibit Five). Ms. Nelson then reviewed a video of the incident, without audio, and believed the claimant was demonstrably upset and animated while Mr. Buenrostro did not respond to her and continued working. She reported her findings to Mr. Czak and he determined that because this was the second situation involving the claimant and her attitude and effect on other employees since September 2013, this type of attitude and behavior had been discussed in her evaluations, and because she had violated several of the employer's policies dealing with harassment after being trained regarding those policies (Employer's Exhibits Seven through Eleven), her employment would be terminated and he notified her of her discharge later that day (Employer's Exhibit Two).

#### **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 claimant had been warned about her negative attitude and behavior in September 2013 and then had an outburst December 27, 2013, during which she said Mr. Buenrostro's actions were "fucking retarded, fucking stupid" and that he needed to "stay the fuck away from her." While she points out that she was not calling him retarded or stupid but rather his actions in unloading her cart, it is effectively a distinction without a difference. Her words were highly offensive and inappropriate and while she was understandably upset with Mr. Buenrostro for unloading her cart, the manner in which she responded could not be tolerated by the employer as it violated several employer policies, including the harassment policy, the claimant had been trained on and signed off on in acknowledgment. The claimant's testimony included the fact that Mr. Buenrostro had called her a "bitch" with an adjective in front of the word on several occasions and although the administrative law judge does not condone his behavior either, he took the appropriate steps by going to upper management and then to Human Resources with his complaint. The claimant, on the other hand, only made one complaint to Human Resources, and that occurred when she received a documented verbal warning about her attitude and behavior. She failed to follow up her complaint with further examples of bad or harassing behavior on the part of Mr. Buenrostro, leaving the employer to believe the situation had been resolved.

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 January 27, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs