

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MILENA S DICKSON**  
Claimant

**APPEAL NO. 09A-UI-09170-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 04/19/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 17, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 13, 2009. Claimant participated. Employer participated by Amber Natthai, front office supervisor, and Emily Jones, team relations manager. The employer was represented by Bill Stasak, who is affiliated with TALX. The record consists of the testimony of Amber Natthai; the testimony of Emily Jones; and the testimony of Milena Dickson.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a casino/hotel in Council Bluffs, Iowa. The claimant was initially hired on April 3, 2008. She worked as a slot specialist in the casino before being transferred to the hotel to handle reservations. The claimant was terminated effective April 15, 2009, for unacceptable job performance. In particular the claimant failed on numerous occasions to properly handle coupons offered by the hotel for special rates. The claimant was trained on the use of these coupons and there were five separate dates on which she received coaching from management. On March 13, 2009, the claimant received a last and final written warning concerning her job performance. On April 10, 2009, the claimant made two incorrect reservations with the coupons and when asked about it said "My bad."

The claimant was suspended for this incident on April 12, 2009, and discharge was recommended. On April 15, 2009, the claimant met with the interim director of the hotel, as she was entitled to an appeal. The interim director confirmed the decision to terminate the claimant's employment.

## REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that warrants discharge from employment is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct is found in deliberate acts or omissions that constitute a material breach of the worker's duty to the employer or in repeated acts of carelessness or negligence. An employee's failure to perform his or her job as a result of inability or incapacity is not misconduct within the meaning of the statute.

According to the employer, the claimant was discharged for unacceptable job performance. The evidence established that the claimant did not perform her job in conformance with the employer's policies and expectations. Despite coaching, the claimant continued to make mistakes on reservations, particularly when customers had coupons. In addition, the claimant failed to properly cancel some reservations and charge for suite upgrades.

The employer has an interest in good customer service and in charging the correct rates for rooms. The claimant's performance did not always satisfy her employer's expectations. However, after carefully considering the evidence, it is determined that the claimant's poor job performance does not rise to the level of misconduct. The claimant's job performance is more consistent with negligence or inability to do the job. Accordingly, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated June 17, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/pjs