

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLARA M SCHNEIDER**  
Claimant

**APPEAL NO: 12A-UI-03958-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 02/19/12  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 4, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been suspended or discharged for disqualifying reasons. The claimant participated in the hearing. Benjamin Pick, an attorney at law, represented the claimant. Before the hearing, the employer's representative contacted the Appeals Section because the employer decided it would not participate in the hearing. During the hearing, Claimant Exhibit A, the February 22, 2012 Coaching Form, was offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer suspend or discharged the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 1997. She worked full time as the associate restaurant manager. She held this position for 11 years.

On September 1, 2011, the employer gave the claimant an action plan because management had concerns about her performance. Claimant Exhibit A. In a February 22, 2012 coaching form, the employer indicated that management had seen little if any improvement in the areas of concern that were addressed with her on September 1. (Claimant Exhibit A.)

On February 22, 2012, the claimant was scheduled to work at 1 p.m. The employer called her at 11:30 a.m and asked her to stop at the office before she went to work. When the claimant went to the office, her immediate supervisor and the assistant food and beverage manager were present. When the associate manager went to get another chair, the claimant asked her supervisor if she was done. The claimant's supervisor nodded yes. The claimant then said that the employer would need the claimant's cards and keys. When the assistant food and beverage manager returned, the claimant's supervisor read a three-page document to the claimant. (Claimant Exhibit A.) The claimant was in shock and does not know what her supervisor said or

read. After the document had been read to the claimant, the employer asked the claimant to sign it. The employer told the claimant it would not make any difference if she signed the document. The claimant did not sign the form. The assistant food and beverage manager then escorted the claimant to her car. The claimant has not returned to work again.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or 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 did not suspend the claimant on February 22, the employer discharged her. This conclusion is supported by the claimant's supervisor affirming that the claimant's employment was done or over. Also, the claimant knows from experience that employees are not escorted out unless they have been discharged.

The employer established business reasons for discharging the claimant. The facts establish the employer was not satisfied with the claimant's work performance, but the evidence does not indicate the claimant committed work-connected misconduct. As of February 19, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representatives' April 4, 2012 determination (reference 01) is reversed. The employer discharged the claimant on February 22, 2012, for business reasons. The evidence does not establish that the claimant committed work-connected misconduct. As of February 19, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs