

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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AMERISTAR CASINO CO BLUFFS INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-03811-SWT
OC 02/08/04 R 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 22, 2004, reference 02, that concluded the claimant's discharge was for work-connected misconduct. A telephone hearing was held on April 28, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeanette Jarvis participated in the hearing on behalf of the employer with witnesses, Denver Meyer and Justin Wathen.

FINDINGS OF FACT:

The claimant worked full-time for the employer as a security officer from July 31, 2000, to February 11, 2004. The claimant was informed and understood that under the employer's work rules, making false statements was grounds for disciplinary action.

On January 26, 2004, the claimant and his supervisor, Justin Wathen, were dispatched to handle a conflict between a guest and an assistant slot manager. The assistant slot manager, Randall McQueeney, reported that the guest was belligerent and threatening. They approached the guest and Wathen spoke to him. He complained about McQueeney and threatened to take him out back and "wallop him." He talked about beating up someone when he was in the Army. The man appeared agitated and made several gestures that the claimant considered threatening as he was explaining. Wathen told the guest that he could stay as long as he did not cause any more problems. Later, the guest was ejected from the casino for taking a steak knife from the restaurant and into the casino. The claimant heard about the guest's bringing the steak knife into the casino and his ejection from the casino.

On January 27, 2004, the claimant was talking to McQueeney. He told McQueeney about Wathen's conversation with the guest and that he had been ejected from the casino for bringing a knife into the casino.

McQueeney informed management that the claimant had informed him that the guest had threatened to slit his throat and had come back into the casino with a knife looking for McQueeney. The claimant did not make any statements like that to McQueeney.

Management decided to suspend the claimant pending an investigation. Before the claimant was officially informed about the suspension, he received an anonymous phone call that tipped him off about his suspension. The claimant did not know who called him. He called an employee at work to see if he could verify what he had been told by the anonymous caller. When the employer discovered that the claimant had been tipped off about his suspension, it was considered a security breach. The claimant initially did not disclose who he had called, but later identified the person to his supervisor.

The employer discharged the claimant on February 12, 2004, for making false statements to McQueeney and not cooperating with the employer's investigation into who tipped him off about his suspension.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and the employer's evidence about what the claimant said to McQueeney was hearsay. The claimant's evidence outweighs the employer's evidence. The employer has not established by a preponderance of the evidence that the claimant committed work-connected misconduct. The claimant's initial reluctance to implicate another employee does not show willful and substantial wrongdoing in light of the fact that he later identified to his supervisor the person he had called.

DECISION:

The unemployment insurance decision dated March 22, 2004, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf