

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN L HEAVERLO
Claimant

APPEAL NO. 07A-UI-06481-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

OC: 06/03/07 R: 01
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Steven Heaverlo filed a timely appeal from the June 20, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 17, 2006. Mr. Heaverlo participated. Kevin Rafferty of Unemployment Services represented the employer and presented testimony through Melissa Coopridier, Director of Hotel Operations.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Heaverlo commenced his full-time employment with Ameristar Casino of Council Bluffs on October 4, 2005. Mr. Heaverlo worked as an associate beverage manager on the employer's riverboat and as an associate restaurant manager before becoming the hotel front office manager on June 28, 2006. Melissa Coopridier, Director of Hotel Operations, was Mr. Heaverlo's immediate supervisor while he was the Front Office Manager. Ms. Coopridier suspended Mr. Heaverlo on May 31 and discharged Mr. Heaverlo on June 1, 2007. As Front Office Manager, Mr. Heaverlo supervised the valet service, the front desk, and the PBX or reservations process. Three supervisors reported to Mr. Heaverlo.

The final incidents prompted Ms. Coopridier's decision to discharge Mr. Heaverlo. One incident concerned a "surprise" AAA hotel rating inspection on May 24. The AAA inspector did not alert the hotel that he was an inspector until after the ratings inspection. The inspector gave the hotel's valet service a poor score because the valet did not use the guest's name and was not sufficiently welcoming towards the guest. The inspector gave the front desk a favorable rating, but told Ms. Coopridier that the front desk operations lacked polish, that the staff had not used a guest's name when dealing with the guest, and that some staff used slang while working at the front desk. The inspector gave the hotels PBX or telephone staff a favorable rating, but told Ms. Coopridier that the staff needed to do more to anticipate the needs of guests. Mr. Heaverlo was not working at the time of the inspection.

The second final incident that prompted the discharge concerned the arrival of a group of hotel guests on May 24. The guests were actually Ameristar corporate staff. Mr. Heaverlo was ultimately responsible for making certain that the front desk staff were properly prepared for the group's visit. This involved generating a list of the guests, assigning and inspecting rooms, and generating a checklist to be completed in connection with the arrival. Mr. Heaverlo created the checklist, posted the appropriate information at the front desk, and made certain the front desk staff had appropriate guidance and information concerning the arrival. Mr. Heaverlo was not working when the group arrived. Ms. Coopridier went to the front desk at the time of the group's arrival and concluded that Mr. Heaverlo had not done everything necessary to prepare for the group's arrival.

On May 12, Ms. Coopridier had placed Mr. Heaverlo on a performance improvement plan. Ms. Coopridier believed that Mr. Heaverlo did not hold the supervisors who reported to him sufficiently accountable. Ms. Coopridier believed the supervisors did not lead by example and did not sufficiently bolster the moral of the rank and file employees under their supervision. Ms. Coopridier had directed Mr. Heaverlo to counsel or discipline the supervisors. Mr. Heaverlo counseled the supervisors, but did not always document the contact. Ms. Coopridier had instructed Mr. Heaverlo to document his one-on-one weekly meetings with each supervisor. Mr. Heaverlo understood the need for such documentation, but did not always document the contact. Ms. Coopridier faulted Mr. Heaverlo for lacking sufficient understanding of the protocols and technology employed in the areas he supervised and believed Mr. Heaverlo did not spend sufficient time at the front desk to familiarize himself with front desk operations. Mr. Heaverlo spent 10-20 percent of his time at the front desk and had mastered the essential computer skills. Ms. Coopridier wanted Mr. Heaverlo to spend 50 percent of his time at the front desk, but may not have conveyed this to Mr. Heaverlo in such terms. Ms. Coopridier was concerned that the hotel ratings and inspections showed a negative trend over the last few months of Mr. Heaverlo's employment, but the hotel continued to receive favorable reviews of the areas Mr. Heaverlo supervised. Ms. Coopridier was disappointed that Mr. Heaverlo did not work more evening shifts, but Mr. Heaverlo arranged his schedule so that the hotel always had supervisor coverage.

In making the decision to discharge Mr. Heaverlo, Ms. Coopridier also considered prior warnings she had issued to Mr. Heaverlo. These included a warning in December when Mr. Heaverlo had hired two employees without obtaining Ms. Coopridier's approval and spoken out of turn to an employee regarding her application for a promotion.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish a "current act" of misconduct upon which a disqualification for benefits must be based. See 871 IAC 24.32(8). The evidence in the record is insufficient to establish that Mr. Heaverlo did anything negligent and/or careless that resulted in the valet's poor performance on May 24, 2007. The evidence in the record is insufficient to establish that Mr. Heaverlo did anything negligent and/or careless in connection with the group arrival on May 24. Because the evidence in the record fails to establish a current act of misconduct, the administrative law judge concludes that Mr. Heaverlo was discharged for no disqualifying reason. Accordingly, Mr. Heaverlo is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Heaverlo.

Because the evidence fails to establish a "current act," the administrative law judge need not consider whether the other conduct rose to the level of misconduct. See 871 IAC 24.32(8). Nonetheless, the administrative law judge concludes, based on the evidence, that Mr. Heaverlo performed his duties to the best of his ability. Accordingly, his inability to perform to Ms. Coopriders' high expectations would not amount to misconduct that would disqualify him for unemployment insurance benefits.

DECISION:

The Agency representative's June 20, 2007, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css