

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS WILCOX

Claimant

APPEAL NO: 11A-UI-10968-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC

Employer

OC: 07/03/11

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Travis Wilcox (claimant) appealed an unemployment insurance decision dated August 9, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Ameristar Casino Council Bluffs, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2011. The claimant participated in the hearing. The employer participated through Emily Jones, Team Relations Manager; Rhonda Huntley, Count Room Manager; and Tom Kuiper, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time count room supervisor from November 1, 2004 through July 6, 2011. He was on a last and final warning for job performance when he was suspended for management review. The employer has a progressive disciplinary policy that provides a verbal, a written and a last and final warning before management review. Management review is a suspension wherein the employee has three days to contact human resources to request an appeal. Failure to contact human resources within that time results in termination.

The claimant was placed on a last and final warning on May 31, 2011 for a no-call/no-show on May 22, 2011. He had found someone to work for him but he did not notify the Count Room Manager or the Director of Finance either before or after his absence. The claimant testified that the attendance policy had never applied to the employees in the Count Room. The warning advised the claimant that the same standards applied to him regardless of whether he

was a team member, an hourly or a salaried employee. He also testified that he did not know his job was in jeopardy even though the warning stated that any further incidents may result in disciplinary action up to and including termination.

The employer received a complaint from a Count room team member on approximately June 28, 2011 who was upset that the claimant allowed another team member to sleep during work hours. The employer conducted an investigation and reviewed surveillance tape from the Count room from June 20, 2011. Employee Trevor Wurtz fell asleep during the count and several other team members were involved in horseplay, making fun of him and placing objects on his head. The claimant was the Supervisor in the Count room and was seen observing the events with a smile on his face. The conduct went on for approximately 20 minutes and the claimant took no action to wake up Mr. Wurtz or to stop the other team members from making fun of him. The employer questioned him on June 30, 2011 and he apparently did not believe he had done anything wrong. He was placed on management review at that time and failed to contact the employer within the next three days.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged on July 6, 2011 with an effective date of June 30, 2011 although he denies all wrongdoing. He was on a final review when he failed to carry out the duties of a supervisor, failed to uphold the employer's values and failed to lead his employees by example. He allowed an employee to sleep while getting paid for working and allowed the other employees to not only make fun of that employee, but to place objects on the sleeping employee's head. Regardless of any policies and procedures, he was the supervisor and he failed to protect the dignity of his employee by allowing other employees to take offensive actions on and around the sleeping employee. The claimant's failure to act shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 9, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs