

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

JUDY E SIPES  
110 S 35<sup>TH</sup> ST #7  
COUNCIL BLUFFS IA 51501

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

Appeal Number: 05A-UI-02798-SWT  
OC: 02/06/05 R: 01  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 7, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 4, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Beth Crocker participated in the hearing on behalf of the employer with witnesses, Denver Meyer and Ryan Stovie.

FINDINGS OF FACT:

The claimant worked for the employer as a cage cashier from July 9, 1998, to January 25, 2005. She was informed and understood that under the employer's work rules, employees were subject to discipline up to and including termination for unexplained variances of greater than \$300.00, which would include cash shortages and overages.

In June 2004, the claimant had \$195.00 in unexplained cash shortages for the month. In September 2004, she had \$181.79 in unexplained cash shortages, for which she was counseled. In October 2004, she had \$167.38 in unexplained cash shortages, for which she was counseled. In November 2004, she had \$259.78 in unexplained cash shortages, for which she was counseled. In December 2004, she had cash shortages totaling \$1.76. The claimant's record of cash shortages was considerably worse than those of other cage cashiers and established a pattern of careless money handling.

On January 22, 2005, claimant had an unexplained cash shortage of \$539.05, which was due to negligence on her part in handling the money on that day. After an investigation, the employer discharged the claimant on January 25, 2005, based on the unexplained cash shortage and her previous history of shortages.

#### 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 employer has proven that the claimant was repeatedly negligent performing her money handling responsibilities. The shortages were large and recurrent demonstrating a substantial disregard of the employer's interests. The claimant's repeated negligence equals willful misconduct in culpability.

#### DECISION:

The unemployment insurance decision dated March 7, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/pjs