

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A WHITE
Claimant

APPEAL NO. 07A-UI-10735-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

OC: 10/14/07 R: 01
Claimant: Respondent (1-R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 14, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 5, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Josh Burroughs participated in the hearing on behalf of the employer with witnesses, Emily Jones and Michelle Moobery. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a count room lead from April 17, 2000, to August 22, 2007. On October 11, 2006, the claimant received a performance improvement warning after she had responded angrily when another employee had asked her to stop throwing slot machine cartridges. She was informed that further displays of negative attitude could result in discipline up to and including termination.

On August 15, 2007, Jen Simmons, a cage banker, came into the count room to verify the cash from a kiosk drop. When she was finished, she attempted to take a small cart and a large cart out of the count room. No one had called surveillance to get authorization for the removal of the large cart from the room, which was necessary whenever anything is brought in to or taken out of the room. The claimant informed Simmons that she was not authorized to remove the large cart. When Simmons asked the claimant to call surveillance to authorize taking the cart, the claimant asked her if she could wait until the next break because employees had been instructed to limit their calls to surveillance. Simmons told the claimant that she needed the cart right away. The claimant then called surveillance and the cart was authorized to be taken out of the count room. Simmons then began pushing a small cart in front of her and pulling the large cart behind her. The claimant assisted by pushing the large cart. At one point, Simmons was pinned between the two carts because there were things obstructing the way. Simmons was not hurt and did not say anything to the claimant. Later, after Simmons recounted what did

happen to a coworker, the coworker reported to management that the claimant had acted rudely toward Simmons and had hit her with the cart. The claimant never shoved the cart or deliberately pushed the cart into Simmons.

On the same day, employees in the count room alleged that the claimant had required them to work five hours straight and would not allow them to take a break. The claimant had told the individuals that she wanted to finish what they were working on but did not refuse to allow them to take breaks.

The employer discharged the claimant on August 23, 2007, for unacceptable job performance based on her conduct on August 15, 2007, and the previous warning she had received in October 2006.

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified believably about what happened on

August 15, 2007, and the employer's evidence consists of hearsay. The claimant's testimony outweighs the employer's evidence in this case. The evidence fails to show that the claimant was rude toward Simmons or deliberately pushed the cart into Simmons. She properly stopped Simmons, who was preparing to leave the room with a car without authorization. After Simmons explained that she needed the cart right away, the claimant called surveillance for authorization. The preponderance of the evidence establishes that the claimant did not refuse to allow employees to take their breaks.

During the hearing, the claimant stated that she had not been released to return to work full time until the week of October 21, 2007. This raises an availability issue that was not noted on the hearing notice. This matter is remanded to the agency to investigate and make a determination.

DECISION:

The unemployment insurance decision dated November 14, 2007, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue of whether the claimant was able to and available for work effective October 14, 2007, is remanded to the agency to investigate and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw