

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA L WAYMIRE
Claimant

APPEAL NO. 09A-UI-00707-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO COUNCIL BLUFFS
Employer

**OC: 12/14/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ameristar Casino Council Bluffs, Inc. (employer) appealed a representative's January 7, 2009 decision (reference 01) that concluded Shawna L. Waymire (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2009. The claimant participated in the hearing. Sandy Fitch of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Emily Jones and Renee Brown. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 14, 1998. She most recently worked full time as a main banker on the swing shift in the employer's casino. She had previously worked as a cashier in the cage department until transferring to the accounts payable department, where she spent several years until returning to the cage department on July 14, 2008. Her last day of work was November 28, 2008. The employer suspended her on that day and discharged her on December 1, 2008. The reason asserted for the discharge was too many cash variances.

After returning to the cage department, the claimant's first variance was a net drawer monthly variance in the amount of \$170.00 for the month of August. On September 23 the claimant was working on a computer dispenser on which she had not previously worked and on which she had only a few minutes training when she made a \$200.00 overpayment to a guest. She was given a warning for this incident on October 17. On October 26 the claimant paid out a jackpot to a cashier but did not get all of the necessary documentation in a timely fashion, resulting in a \$110.00 discrepancy. She was given a final warning for this on November 22.

On November 23 the claimant filled an automatic payout machine. Due to misreading the machine report of how much money it contained, the claimant put more money into the machine than was correct and than was shown on the documentation, creating a \$900.00 variance. This discrepancy was found on November 25. As a result, she was suspended on November 28 and discharged on December 1.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her repeated discrepancies and variances. However, none of the discrepancies or variances was due to a repeat of the same type of error she had previously made. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to properly follow procedures to the best of her abilities. Under the circumstances of this case, the claimant's failures were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or good faith errors in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 7, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css