

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA HOLBROOK
Claimant

APPEAL NO. 06A-UI-11034-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

OC: 10/22/06 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Debra Holbrook (claimant) appealed an unemployment insurance decision dated November 13, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she 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 December 4, 2006. The claimant participated in the hearing. The employer participated through Shila Kinsley, Team Relations Coordinator, and Rachel Thompson, employer representative. Employer's Exhibit One was 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 employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time human resources representative from February 25, 1997 through October 24, 2006, when she was discharged for a repeated failure to follow the employer's directives. The employer issued her four verbal warnings for overall job performance regarding timeliness, accuracy, and attention to detail with her work. The claimant received a written warning on June 20, 2006 for the same issues. The filing needed to be done at the end of each day, but the claimant was several weeks behind. She was directed to label all file cabinets but did not do it. The claimant was responsible for the evaluation reports and ensuring there were headers and footers on each page but had not done this either. There were several other problems that were specifically addressed in the warning and she was effectively placed on a performance improvement plan.

Problems with her performance continued and she was given a final warning on September 29, 2006. The filing was still not getting done on a timely basis and her lack of attention to detail was creating problems. The claimant was responsible for employment verifications and she

was not following policy in completing these. She had been doing the job for some time and was capable of following the directives given to her. The final incident occurred when the claimant failed to provide documentation for two fact-finding interviews. The first one was held on October 14, 2006, and the claimant was given a deadline to provide the information but failed to meet it and the employer had no support documentation to provide to the fact-finder. The same problem arose on October 20, 2006, but the employer scrambled to get another file from the warehouse and was able to proceed. It was recommended her employment be terminated and she was given notice of this on October 20, 2006 but had five days to appeal the decision to a management review team. She did not appeal the termination and was discharged on October 24, 2006.

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 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 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 for her repeated failure to

follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant was capable of performing the work according to the employer's directives and expectations. Her failure to do so demonstrates a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 November 13, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw