

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDE W WESTOVER

Claimant

APPEAL NO. 11A-UI-10158-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC

Employer

OC: 07/03/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 26, 2011, reference 01, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on August 25, 2011. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Jude Westover was employed by Ameristar Casino Council Bluffs from January 31, 2007 until June 28, 2011 when he was discharged from employment for exceeding the permissible number of attendance infractions allowed under company policy. Mr. Westover worked as a full-time count room specialist and was paid by the hour. His immediate supervisor was Travis Wilcox. The department manager was Ronda Huntley.

Mr. Westover was discharged after he exceeded the permissible number of attendance infractions allowed under company policy. Mr. Westover was aware of the policy and had been warned.

The claimant elected not to report for scheduled work for two days prior to his discharge because he was upset because another employee had been discharged. Although the claimant contended that one of those days had been authorized the department manager concluded that authorization had not been given and attendance points were assessed.

The final incident that caused the claimant's discharge took place when Mr. Westover failed to report to work on or about June 28, 2011 due to transportation problems.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

No aspect of the contract of employment is more based than providing the employer to expect employees will appear for work on the hour and day agreed upon. The current failure to honor that obligation shows a substantial disregard for the employer's interests and standards of behavior and thus justifies the finding of misconduct in connection with the employment.

The Supreme Court in the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of misconduct and that the concept includes tardiness, leaving early, etcetera. The Supreme Court of Iowa in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility" such as transportation problems or oversleeping are considered unexcused.

For the reasons stated herein, the administrative law judge concludes the claimant's separation from unemployment took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated July 26, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css