

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN H CLARK
Claimant

APPEAL NO: 09A-UI-09554-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO COUNCIL BLUFFS
Employer

OC: 05/17/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Ameristar Casino Council Bluffs, Inc. (employer) appealed a representative's June 22, 2009 decision (reference 01) that concluded Lynn H. Clark (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 July 21, 2009. The claimant participated in the hearing. Beth Crocker of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Lori Cap and Emily Jones. 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 February 15, 1999. Since November 2008 she worked full time as a casino services representative. Her last day of work was May 16, 2009. The employer discharged her on that date. The stated reason for the discharge was repeated failure to follow policy on checking identification after prior warnings.

In December the employer began enforcing a policy in which service representatives were required to scan a customer's driver's license as identification before making changes to the customer's profile or giving the customer a personal identification number (PIN) for the customer to access the customer's account. After several months of informal warnings on the procedure, the employer began giving documented coachings on the issue; the claimant was given verbal warnings in March 2009. When the claimant continued to fail to consistently obtain and scan customers' identifications, on April 3 the claimant was given a final warning. The final warning advised her that should she have further instances of failing to follow the policy within the next year, she would be discharged.

On May 13 the claimant dealt with the same customer twice during her shift where the customer was asking for the account PIN to be reset. The claimant failed to ask for and scan the customer's identification both times. The claimant's only explanation was that she had forgotten. When the employer discovered the failure on May 14 on a routine audit, the decision was made to discharge her due to the occurrence after the April 3 final warning.

The claimant established a claim for unemployment insurance benefits effective May 17, 2009. The claimant has received unemployment insurance benefits after the separation.

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); Iowa Code § 96.5-2-a.

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 claimant's failure to check and scan the customer's identification after multiple prior verbal warnings as well as a prior final warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's June 22, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 16, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs