

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRGINIA A RIDDER
Claimant

APPEAL NO. 11A-UI-04339-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

**OC: 02/27/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 24, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 16, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with witnesses, Emily Jones and Todd Sharp. Exhibits One to Four 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 beverage server from March 4, 2010, to February 17, 2011. She was coached on May 29 for not picking up glasses from the tables at the end of her shift. She was coached on June 12, September 9 and November 27 for taking too much time taking and delivering drink orders. The warning on November 27 stated it was a final warning.

Security did a random audit of the claimant's work performance on February 16. They reported that the claimant had not gone through her assigned section within 20 minutes as was the expectation, was not speaking to all the guests she met, and was spending too much time talking with servers and the bartenders when she was placing and picking up drink orders.

The claimant was about eight months pregnant in mid-February and on February 16 she was feeling ill. She had notified her supervisor about this, but her supervisors told her that she had to work. Her section was not full, and so she went to the areas in the section where guests were sitting rather than go to every area in the section.

The employer discharged the claimant on February 17 for not satisfactorily performing her job on February 16, after considering her prior coaching sessions.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. I conclude the claimant was performing the job to the best of her ability considering her illness and condition that day.

DECISION:

The unemployment insurance decision dated March 24, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs