IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBIN R MULLINS
Claimant

AMERISTAR CASINO COUNCIL BLUFFS
Employer

APPEAL NO: 13A-UI-12136-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ameristar Casino Council Bluffs, Inc. (employer) appealed a representative's October 24, 2013 decision (reference 02) that concluded Robin R. Mullins (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 November 20, 2013. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Beth Crocker of Equifax/TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Lori Cap and Tammy Spearman. Based on the evidence, the arguments of the employer, 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 12, 2012. She worked part time (about 28 hours per week) as a casino services representative / cage attendant. Her last day of work was September 2, 2013. The employer discharged her on September 9, 2013. The reason asserted for the discharge was having too many variances in her drawer.

From early in her employment the claimant had continued problems with variances in her drawer, receiving her first warning on September 9, 2012. She received a final warning on May 28, 2013 for a $175.60 variance which had occurred on April 8, 2013. It had been suggested to her that she transfer into another area of employment, but as of September 2, 2013 that had not occurred.

On August 18 the claimant was short $86.00. The employer did not discharge her at that time, but waited until September 2 to effectively suspend her for having more than a $50.00 variance for the month of August after having been given the final warning in May. The employer then discharged her on September 9 for the same reason.

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 variance of more than $50.00 in the month of August, of which $86.00 occurred and was known on August 18. There is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The incident which took her over $50.00 for August question occurred and was known more than two weeks prior to the employer's discharge of the claimant. Further, misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. Being incapable of doing the work assigned to the employer's standards is not misconduct. 871 IAC 24.32(5). There is no evidence the claimant intentionally worked below the best of her abilities.

While the employer may have had a good business reason for discharging the claimant, it 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 October 24, 2013 decision (reference 02) 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs