

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOPE CUTLER**  
Claimant

**APPEAL NO. 08A-UI-03335-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 03/02/08 R: 01**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ameristar Casino Council Bluffs, Inc. (Ameristar) filed an appeal from a representative's decision dated March 27, 2008, reference 01, which held that no disqualification would be imposed regarding Hope Cutler's separation from employment. After due notice was issued, a hearing was held by telephone on May 5, 2008. The employer participated by Curtis Walker, Executive Pastry Chef, and Emily Jones, Team Relations Manager. The employer was represented by Tom Kuiper of TALX Corporation. Ms. Cutler responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

**ISSUE:**

At issue in this matter is whether Ms. Cutler was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cutler was employed by Ameristar from July 31, 2000 until March 5, 2008. She was last employed full time as a baker, a position she held for approximately the last two years of her employment. She was discharged from the employment.

Ms. Cutler received a verbal warning on May 12, 2007 because of the amount of time she spent on daily tasks and because the employer did not feel she was working safely. She was told she needed to put her knife down when not using it. She received another verbal warning on May 25 because there was no consistency to the quality of her work. Ms. Cutler received a written warning on December 8 because the quality of her work was not consistent. The breads she was making at that time were not all cooked to the same degree. When questioned, she indicated that she was in a hurry and did not allow some of the breads to bake long enough.

Ms. Cutler received a final written warning on December 14. She was making dessert "shooters" but was not following the established recipes. She told the employer she did not follow the recipes because she was in a hurry. It was also noted that glasses she cleaned were

dirty because she used a dirty towel to wipe them. The discharge was prompted by the fact that Ms. Cutler was using a dirty whisk on March 2 when making pecan pie. The whisk had been washed but Ms. Cutler failed to note that there were dried particles of food on it. A coworker noted the food particles and brought them to her attention. Some of the particles were already mixed in with the pie filling, causing the employer to have to discard approximately \$60.00 worth of filling. As a result of this final incident, Ms. Cutler was discharged on March 5, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There must be a current act of misconduct to support a disqualification from benefits. See 871 IAC 24.32(8). The final incident that prompted Ms. Cutler's discharge concerned her use of a dirty whisk when making pie filling on March 2. The whisk had been washed but dried particles of food remained. The administrative law judge did not have the benefit of seeing the whisk to determine if the food particles were such that they were impossible to avoid seeing. The administrative law judge concludes that the final act represented negligence rather than intentional misconduct.

The next most prior disciplinary action against Ms. Cutler was on December 14, 2007. She deliberately and intentionally failed to follow an established recipe when making a dessert. However, conduct that occurred in December would not represent a current act in relation to a discharge that occurred on March 5. Inasmuch as Ms. Cutler's discharge was not predicated on a current act that constituted misconduct within the meaning of the law, no disqualification is imposed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

#### **DECISION:**

The representative's decision dated March 27, 2008, reference 01, is hereby affirmed. Ms. Cutler was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw