

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICK R MCGILL
Claimant

APPEAL NO. 11A-UI-09785-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

OC: 05/29/11
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 14, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 18, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Barb Hamilton participated in the hearing on behalf of the employer with a witness, Emily Jones. Exhibits One and Two were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a casino services representative from August 5, 2010, to May 19, 2011. The claimant was informed and understood that under the employer's work rules, employees were prohibited from creating a gambling account for a person who has self-excluded themselves from casino gambling. Records are kept about such persons. Both the employee and the casino can be subject to sanction by the Iowa Racing and Gaming Commission for allowing a self-excluded person to gamble.

On February 5, 2011, the claimant deliberately allowed a person who was on the list of self-excluded persons to create a gambling account. When entering information into the computer system about this person to set up the account, the screen would have flashed red notifying him the person was on the self-excluded list. The claimant would have to key in an override and ignored the warning to set up the account for the person.

The person ended up using the account to gamble on seven different occasions, which could have jeopardized his and the employer's gaming licenses.

The employer did not discover the claimant's conduct until May 13, 2011. It suspended him on May 14 for this conduct. During the investigation, the claimant admitted to creating duplicate accounts to meet his quota of signups. The employer discharged the claimant on May 18, 2011, for his violation of the policy on excluded persons.

The claimant filed for and received \$519.00 unemployment insurance benefits for the weeks between May 29 and June 18, 2011.

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The Agency decided there was no current act of misconduct, but the current act rule only requires that action be taken promptly after the employer discovers the misconduct, which the employer did here.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 14, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise

eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css