

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY R SCHAEFER
Claimant

APPEAL NO. 13A-UI-12558-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

**OC: 09/29/13
Claimant: Respondent (2)**

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 October 31, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 3, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Dana Stewart participated in the hearing on behalf of the employer with witnesses, Stephanie Wheeler and Tammy Spearman. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant required to repay any overpayment and is the employer subject to charge for any benefits overpaid?

FINDINGS OF FACT:

The claimant worked part time for the employer as a room attendant from March 8, 2012, to September 23, 2013.

The claimant received a verbal warning on October 15, 2012, for poor cleaning performance. On March 15, 2013, she received a written warning for poor cleaning performance. On May 4, 2013, she received another written warning for poor cleaning performance. On May 4, 2013, the claimant received a final written warning for lack of attention to detail in employment.

On September 7, 2013, the claimant had a one-on-one discussion with her supervisor about making sure that she changed bed linens and looked for stains. She knew at that time that her job was in jeopardy due to her work performance.

The claimant was subject to room inspections and the score for those inspections were recorded and reported monthly, based on a 100-point scale—with 90 percent being the expectation. For 2013, her scores were as follows: 45 percent (January), 0 percent (February),

45 percent (March), 90 percent (April), 43 percent (May), 68 percent (June), 74 percent (July), and 91 percent (August). As of the third week in September, the claimant's inspection percentage was 0 percent. The claimant's performance would improve after she was counseled but declined later.

On September 23, the claimant failed to notice cigarette ashes on the pillow, on the sheet by the headboard, and in the middle of the fitted sheet. The claimant was careless in performing her job that day.

The claimant was off work until September 28, 2013, she was suspended pending management review of her employment status. On October 1, 2013, she was informed that she was discharged due to repeated negligence in her cleaning performance.

The claimant filed for and received a total of \$1,350 in unemployment insurance benefits for the weeks between September 29 and November 30, 2013.

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 evidence establishes repeated negligence by the claimant as shown by the warnings she received in the past, her inspection scores, and her neglect to make sure the room with the ashes on the bed was properly cleaned on September 23. The fact that she had inspection scores that met expectation and then times when she had zero score shows she was capable of acceptable work. Through her repeated negligence, she materially breached the duties and obligations arising out of the contract of employment, which equals willful misconduct in culpability.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,350 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated October 31, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,350 in benefits, which she is required to repay. The employer is not subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs