**IOWA WORKFORCE DEVELOPMENT**
**Unemployment Insurance Appeals Section**
**1000 East Grand—Des Moines, Iowa 50319**
**DECISION OF THE ADMINISTRATIVE LAW JUDGE**
68-0157 (7-97) – 3091078 - EI

**VALARIE R EASTER**
**3078 FOX ST**
**OSCEOLA IA 50213**

**SOUTHERN IOWA GAMING CO**
**LAKESIDE CASINO & RESORT**
**PO BOX 424**
**OSCEOLA IA 50213**

**Appeal Number: 04A-UI-03268-DWT**
**OC 02/15/04 R 03**
**Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Valarie R. Easter (claimant) appealed a representative's March 17, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Lakeside Casino & Resort (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2004. The claimant participated in the hearing. Mary Ann Towsley, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant on April 14, 2002. During this period of employment, the claimant worked as a full-time dealer. Chris Block was the claimant's supervisor. The employer's written attendance policy informs employee they will be discharged if during their employment they accumulate more than ten attendance points. The employer assesses a point even when an employee is ill.

In December 2003, the claimant experienced problems with her pregnancy. She notified the employer she was unable to work as scheduled on December 17, 22, 26 and 27, 2003. The claimant had a miscarriage and was hospitalized on December 26. As a result of her absences in December, the claimant had 12.5 attendance points. After the claimant returned to work in late December, the employer gave her a three-day suspension for excessive absenteeism. The claimant understood she would be discharged if she had any more attendance problems.

Between December 29, 2003 and February 15, 2004, two of the claimant's attendance points rolled off so she had 10.5 attendance points. The claimant did not have any attendance problems until February 16, 2004.

The employer had recently changed the format of the schedules that employees look at to see when they were scheduled. Employees had to look at a schedule that was posted inside a case. When the claimant read her schedule for the February 16, she accidentally read that she was scheduled to start her shift at 1:00 p.m. The employer actually had the claimant scheduled to start at noon and the person above her name was scheduled to start at 1:00 p.m.

On February 16, 2004, the claimant arrived to work for what she thought was her 1:00 p.m. start time. As soon as the claimant arrived, the employer asked her why she was late. The claimant indicated she was not late and did not realize she was late until the employer showed her the schedule. The employer assessed the claimant one point for arriving late for work. As a result of this attendance problem, the employer discharged the claimant on February 18, 2004, for violating the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer followed its attendance policy and discharged the claimant for exceeding the attendance points the employer allowed employees. Pursuant to its policy, the employer had compelling business reasons for discharging the claimant. For unemployment insurance purposes, the evidence does not establish that the claimant's recent attendance problems were the result of the claimant's intentional failure to report to work as scheduled. On February 16, the claimant made an honest mistake when she misread the schedule. Since the claimant had not had any problems reading the schedule before, the claimant's testimony that she made a mistake when she read the schedule is credible. The employer made a business decision to assess employees' points when they are ill. When an employee is ill and unable to work, the employee has not intentionally failed to work as scheduled. Instead, the employee is unable to work and the absence is excused for unemployment insurance purposes. Under the facts of this case, the claimant did not commit work-connected misconduct. Therefore, as of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 17, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf