

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHELLE E BOOTS**

Claimant

**APPEAL NO: 14A-UI-05597-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**

Employer

**OC: 04/27/14**

**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge

Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's May 22, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate at the June 24 hearing. Beth Crocker, the employer's representative, Tom Reis, the casino operations shift manager, and Tammy Spearman appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the employer's arguments and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

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

Has the claimant been overpaid any benefits?

Is the claimant or the employer responsible for paying back any overpayment of benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in January 1996. She worked as a casino supervisor in the table games department. During her employment, the claimant received written warnings concerning issues in the performance of her job. The claimant received a final written warning on May 18, 2013. The claimant received this warning after she failed to correctly count money as a closer. The Iowa Gaming Commission fined the claimant \$50 for this violation. (Employer Exhibit One.) The May 18, 2013 final written warning informed the claimant that if she had any more policy violations within the next year, she would be discharged.

The claimant received training (Employer Exhibit Four) and knew as a supervisor that table games winnings of \$600 or more and at least 300 times the amount of the wage required the generation of a W-2G/1042S form (Employer Exhibit Two) and that taxes had to be taken from the winnings. (Employer Exhibit Three.)

On April 15, 2014, the claimant failed to timely identify a taxable jackpot and withhold the appropriate taxes from a guest. The guest had won \$1500 on a 300 to 1 bet. The employer's surveillance caught the error and taxes were recovered from the guest. The employer considered this a major violation. Since the claimant was on a final written warning, the employer discharged her on April 18, 2014. The employer discharged the claimant because she knew and understood the taxable jackpot rules, but failed to initially withhold the appropriate taxes from the April 15 winner.

The claimant established a claim for benefits during the week of April 27, 2014. She filed weekly claims for the weeks ending May 10 and 17, 2014. She received her maximum weekly benefit of \$424 for each of these weeks. The employer participated at the fact-finding interview.

#### **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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented at the hearing, the claimant's failure to initially identify a taxable jackpot and withhold the appropriate taxes amounts to negligence. Since the employer previously warned the claimant about her failure to follow compliance procedures, this was not an isolated incident of negligence. The employer established that the claimant's continued negligence amounts to work-connected misconduct. As of April 27, 2014, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant was not legally entitled to receive benefits for the weeks ending May 10 and 17. She has been overpaid \$848 in benefits she received for these weeks.

The unemployment insurance law 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. However, a claimant will not have 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 employer participated at the fact-finding interview. Therefore, the claimant is responsible for paying back the \$848 overpayment.

**DECISION:**

The representative's May 22, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 27, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid \$848 in benefits she received for the weeks ending May 10 and 17, 2014. The claimant is responsible for paying back the overpayment of these benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs