

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTI L BUNTE**  
Claimant

**APPEAL NO. 06A-UI-09261-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 08/13/06 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 7, 2006, reference 01, fact-finder's decision concluded that concluded that the claimant was discharged from work for violations of a known-company rule. After hearing notices were mailed to the parties, a hearing was conducted in Council Bluffs, Iowa, on October 11, 2006. The claimant appeared and testified. Appearing on behalf of the claimant was her attorney Ms. Maggie McCann, 25 Main Place, Suite 200, Council Bluffs, Iowa 51503. Appearing as a witness for the claimant was Ms. Heather Lawrence. Appearing on behalf of the employer was Ms. Lynn Corbeil, Attorney at Law. Appearing as witnesses were Mr. David Kinder, Director of Surveillance and Ms. Sheila Kinsley. Employer's Exhibits One through Seven were received into evidence. Claimant's Exhibits A, B and C were received into evidence.

**ISSUES:**

Did the claimant voluntarily quit employment for reasons that qualify her to receive unemployment employment insurance benefits? Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Ms. Bunte was employed by Ameristar Casino from August 5, 1998 until August 1, 2006, when she was discharged from employment for violation the company's fraternization and sexual harassment policies. Her immediate supervisor was David Kinder, Director of Surveillance. The claimant held the position of surveillance manager working 11:00 p.m. until 7:00 a.m.

The claimant was discharged as a result of an investigation that determined that the claimant had violated established company policies by fraternizing with another company employee who is an hourly worker and by violating the company's sexual harassment policy. Ms Bunte was aware of both the fraternization policy and harassment policy.

On July 29, 2006, the claimant was placed on suspension pending a further investigation based upon a report from the facilities security division that the claimant had engaged in a long telephone conversation with one of the security officers on the night of July 22 – 23, 2006. A review of the company's telephone records and video surveillance showed that the claimant made an outgoing telephone call from the security surveillance room to a female security guard stationed at the security entrance podium. A review showed that the call lasted 37 minutes and that the security guard was distracted from performing her duties at times during the lengthy conversation. Ms. Bunte listed the call on her required log as "PBS outgoing inquiry." The claimant was interviewed but maintained that the call was related to business purposes, to identify an oriental female individual who was believed to be on the premises. Due to the extreme length of the call and failure of the claimant to provide a reasonable explanation, the employer determined that the call had been made to the security officer for personal reasons and thus was a violation of the surveillance department's policy against fraternizing of security officers or others that are employed within the casino. Under the terms of the policy, violations can result in disciplinary action up to and including termination.

During the investigation of above-stated issue, it also came to the attention of the employer through the complaints of two employees that the claimant had engaged in disseminating a sexually-explicit compact disc. The complaint was made directly to corporate security by two employees under the claimant's direct supervision. Ms. Bunte had provided the sexually-explicit CD to an employee on Ameristar Casino property prior to a work shift and had instructed the employee to then provide the CD to a second employee. At least two employees who had viewed or were aware of the CD's contents made an official complaint regarding Ms. Bunte's conduct.

Under established casino policies, surveillance department employees are held to be separate and apart from other employees and because of the confidential and regulatory mandated nature of their work, they are required to have contact with any and all individuals employed in the facility for business reasons only. Any contacts that consist of fraternizing or giving the appearance of fraternizing is forbidden. Violation can result in the suspension up to and including termination. Under the casino's Workplace Free of Harassment policy, any conduct that harasses, disrupts or creates an offensive work environment is considered to be a violation including sexual harassment. Casino policy specifically prohibits displaying sexually oriented or degrading materials.

Based upon the employer's review of the 37-minute conversation that was conducted between Ms. Bunte, the surveillance manager, and an hourly security worker the employer reasonably concluded that a substantial portion of the conversation was related to personal matters and thus the claimant was engaging in fraternizing while on duty in violation of casino policy. The claimant's dissemination of a sexually explicit compact disc to hourly employees that resulted in complaints regarding Ms. Bunte's conduct was determined to be a clear violation of the casino's sexual harassment policy and decision was therefore made to terminate Ms. Bunte's from her employment.

It is the claimant's position that the dissemination of the sexually explicit compact disc took place during nonwork hours and thus did not violate the employer's rules. It is the claimant's position that the 37-minute telephone conversation between herself and the female security officer was strictly related to casino business in an effort to ascertain the identity of a patron who had been excluded by the casino in the past.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant's conduct showed a willful disregard of employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees. It does.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Here, the evidence establishes that Ms. Bunte was not only aware of the casino's anti-fraternization policy for surveillance department employees and the company's sexual harassment policy, in addition the claimant held a management position within the organization. Although the claimant was in a sensitive management position that required her to observe and oversee other individuals observing the conduct of other casino employees, she nevertheless engaged in intentional fraternization and the dissemination of sexually explicit materials to company workers.

The evidence establishes that during the telephone conversation in question Ms. Bunte and the female recipient of the conversation engaged in ongoing bantering conversation for 37 minutes. The record establishes that during this time the female security officer at times was not attentive to her security duties. Based upon extensive questioning during the administrative hearing in this matter, the administrative law judge finds the claimant's explanation that the 37-minute conversation was strictly "business" to strain credibility.

The administrative law judge finds that the claimant's dissemination of a sexually explicit compact disc on casino property to other employees to be a violation of the casino's policy which prohibits such conduct. The evidence establishes that the claimant was aware of the casino policies and was aware that violation of policies could result in disciplinary action up to and including termination. The administrative law judge, therefore, concludes that based upon

the hearing record that the claimant's conduct was a willful disregard of her employer's interests and standards of behavior and thus was misconduct in connection with the work.

**DECISION:**

The Agency representative's decision dated September 7, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified from unemployment insurance benefits until she has worked in and has been paid wages for insured work equally ten times the weekly benefit allowance, provided that she meets all of her eligibility requirements.

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Terence Nice  
Administrative Law Judge

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Decision Dated and Mailed

cs/pjs