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

TAMMY M BLANCHARD
3020 9TH AVE
COUNCIL BLUFFS IA 51501-5841

AMERISTAR CASINO COUNCIL BLUFFS INC
C/O EMPLOYERS UNITY INC
NOW TALX CORP
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-04569-RT
OC: 04/02/06 R: 01
Claimant: Appellant (1)

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 is 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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Tammy M. Blanchard, filed a timely appeal from an unemployment insurance decision dated April 25, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 15, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Shila Kinsley, Team Relations Coordinator, and Neal Wozniak, Accounting Manager, participated in the hearing for the employer, Ameristar Casino Council Bluffs, Inc., Barb Mitchell, Lead Accounts Payable Clerk, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Rachel Thompson of Employers Unity, Inc., now TALX Corporation, represented the employer.

Employer's Exhibit One and Department Exhibit One were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The claimant called the Appeals Section at 11:21 a.m. on May 15, 2006. She left a message for the administrative law judge to call her. The administrative law judge called and spoke to the claimant at 1:20 p.m. The claimant informed the administrative law judge that she did receive the notice but did not call because she was not aware that she had to call. She read the notice but apparently disregarded the language on the notice that clearly says "immediately call when you receive this notice to participate in a telephone hearing." The claimant also stated that she knew the hearing was at 10:00 a.m. but had no real excuse why she waited until over one hour and twenty minutes to call the Appeals Section. The administrative law judge informed the claimant that he could not now take evidence from her since the hearing had begun when the record was opened at 10:04 a.m. and ended when the record was closed at 10:27 a.m. Had the claimant called by 10:27 a.m. she could have participated in the hearing. She did not do so. The administrative law judge informed the claimant that since he could not now take evidence from her that he would treat her telephone call as a request to reopen the record and reschedule the hearing made after the record had been closed and the hearing held. The administrative law judge believes that the following rule is applicable.

871 IAC 26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The administrative law judge concludes that the claimant has not demonstrated good cause to reopen the record and reschedule the hearing. Failure to read or follow the instructions on the notice of appeal and telephone hearing shall not constitute good cause for reopening the record. Here, the claimant clearly did not follow the instructions on the notice of appeal and telephone hearing. Further, the claimant had no good reason why she did not call promptly when the administrative law judge did not call her if she was, in fact, expecting a phone call. Accordingly, the claimant's request to reopen the record and reschedule the hearing is hereby denied.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One and Department Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time accounts payable clerk from August 21, 1998, until she was discharged on April 7, 2006. The claimant was discharged for shredding and attempting to shred, on April 6, 2006, invoices which had not yet been paid. It was the claimant's responsibility to pay original invoices. On April 6, 2006, the claimant was attempting to shred a box of invoices which box contained invoices that had recently been received by the employer and had not been paid. She was observed doing this by Barb Mitchell, Lead Accounts Payable Clerk who reported it to the claimant's supervisor, Neal Wozniak, Accounting Manager and one of the employer's witnesses. Mr. Wozniak confronted the claimant who merely stated that she was overwhelmed by her work. Mr. Wozniak took the box containing invoices, many of which had not been paid, and went through them. He discovered many invoices that had not been paid totaling approximately $21,000.00. Thereafter, the claimant attempted to get the shred box back but was prevented from doing so. These actions were also observed and confirmed by co-workers as shown by their written statements at Employer's Exhibit One.

The claimant had never specifically requested help from the employer but the employer had noticed that the claimant was struggling with her job duties and had provided help cutting back the work she was doing and even rearranging her schedule so that she would have fewer distractions. No similar incident had ever occurred before nor had the claimant ever received any relevant warnings or disciplines.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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).

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on April 7, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified, and their testimony was supported by written statements by co-workers, that the claimant shredded, or attempted to shred, current original invoices which had not been paid. It was the claimant's responsibility to pay original invoices but the claimant was shredding or attempting to shred original invoices before they were paid. The total amount of the invoices that had not been paid that were to be shredded amounted to approximately $21,000.00. When confronted the claimant merely stated that she was overwhelmed by her work. Although the claimant had never specifically requested any assistance in her work, the employer had provided assistance to the claimant including extra help and a rearrangement of her schedule.

The claimant did not participate in the hearing to provide evidence to the contrary but the administrative law judge admitted into evidence the claimant's appeal letter at Department Exhibit One which he treated as a statement in lieu of participation in the hearing. The claimant states in her appeal letter that co-workers went through her desk. The claimant also stated that her shred box was left open in her cubicle and anyone could have put anything in there. However, there is no evidence from the employer's witnesses that anyone put any documents into the claimant's shred box other than the claimant. In fact, the employer's witnesses testified that there was no evidence that anyone had put invoices in the claimant's shred box other than the claimant. Although the claimant stated also in her appeal letter that she had informed current management that she needed help, this was specifically refuted by testimony at the hearing. The testimony at the hearing also indicated that although the claimant had never requested specifically any help, the employer provided her help. On the evidence in the record, the administrative law judge is constrained to conclude that the claimant shredded or attempted to shred current unpaid invoices which she knew were current and unpaid and that this was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless she requalifies for such benefits.

DECISION:

The representative's decision of April 25, 2006, reference 01, is affirmed. The claimant, Tammy M. Blanchard, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

cs/pjs