

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLYDE BEARDMORE

Claimant

APPEAL NO: 09A-UI-06485-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC

Employer

OC: 03-29-09

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 15, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 21, 2009. The claimant participated in the hearing. Emily Jones, Human Relations Manager and Beth Crocker, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for Ameristar Casino from March 24, 2003 to March 13, 2009. On March 13, 2009, the claimant was working Post Three which is the last checkpoint before a patron enters the casino floor. Another employee notified him that a young woman who was known for using fake identification cards and had been in trouble in the past was approaching the claimant's post. The claimant carded the woman and used the black light to try to determine if the identification was a fake but after examining the card and looking at the patron he let her through. He thought she was 21 or 22 years old even though the identification said she was 27. Matt Curran, the supervisor on duty, went to the turnstiles and stopped the woman. He asked for her identification and knew "within seconds" it was not her real identification and determined the picture on the identification did not look like the woman at all. Mr. Curran contacted the DCI and the woman was cited and released for fraudulent use of an identification card. Mr. Curran then checked the claimant's employee file and found that a similar incident occurred June 28, 2008, when an identification card was missing certain security features but was allowed to enter the gaming floor by the claimant. The claimant received a written warning for that incident, for which the employer was fined \$1,000.00. He was not discharged at that time because of the high quality of the fake identification. There was a

similar incident in 2004. The employer's policy is to card anyone under 35 years old and to call a supervisor if there is any doubt.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was warned by a co-worker that the young woman approaching him had a history of using a fake identification card recently and had caused trouble in the past but even with that knowledge, which at least should have tipped the claimant off that the woman was not 27 years old as her identification said, he allowed her to enter the casino. The claimant testified he thought the woman was 21 or 22 years old even though her identification said she was 27. With all of that information at his disposal he should have at least called a supervisor over to check her identification. The claimant had been warned for the same behavior in the past and the seriousness of the incident and the potential fines and other problems it could cost the employer resulted in the employer's decision to

terminate the claimant's employment. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The April 15, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs