

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER CAMDEN**  
Claimant

**APPEAL NO: 08A-UI-04574-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISTAR CASINO CO BLUFFS INC**  
Employer

**OC: 03-30-08 R: 01  
Claimant: Respondent (2)**

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 May 2, 2008, 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 June 5, 2008. The claimant participated in the hearing. Vicky Broussard, Human Resources Manager and Gordon Peterson, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six 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 full-time human resources representative for Ameristar Casino from November 28, 2006 to March 31, 2008. She worked from 8:00 a.m. to 4:00 p.m. On December 6, 2007, the employer sent her an e-mail reminding her not to clock in earlier than seven minutes prior to her shift. On January 2, 2008, she clocked in at 6:38 a.m.; on January 3, 2008, she clocked in at 6:34 a.m.; on January 4, 2008, she clocked in at 6:32 a.m.; on January 7, 2008, she clocked in at 6:46 a.m.; on January 8, 2008, she clocked in at 6:37 a.m.; on January 9, 2008, she clocked in at 6:36 a.m.; on January 10, 2008, she clocked in at 6:31 a.m. and on January 11, 2008, she clocked in at 6:36 a.m. (Employer's Exhibit One). On January 14, 2008, the claimant received a written warning for misappropriation of time for clocking in early after being instructed not to do so (Employer's Exhibit One). On Saturday, March 22, 2008, the claimant arrived for work at 7:00 a.m. (Employer's Exhibit Three). The security surveillance showed her in the cafeteria from 8:33 a.m. to 9:12 a.m., 9:57 a.m. to 10:35 a.m. and then absent from 12:24 p.m. to 1:36 p.m. (Employer's Exhibit Four). Employees are allowed one hour for lunch or one-half hour for lunch and two 15 minute breaks for a total of one hour. The claimant was away from her office for a total of two hours and 19 minutes on March 22, 2008. The employer terminated her employment March 31, 2008, for theft of company time (Employer's Exhibit Two).

The claimant has claimed and received unemployment insurance benefits since her 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 told not to clock in early in the December 6, 2007, e-mail but continued to do so until she received a written warning January 14, 2008. She did not have permission to go in early to make up lost time on the eight days in January 2008 that she went in at least one hour prior to the start of her shift. On March 22, 2008, she exceeded her break/lunch time by one hour and 19 minutes. The claimant's actions constitute a theft of time and she had been warned about her time in the written warning January 14, 2008, and knew or should have known that it was unacceptable to take an extra one hour and 19 minutes March 22, 2008, especially considering she was a human resources employee. 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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The May 2, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,896.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs