

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C VLCEK
Claimant

APPEAL NO. 06A-UI-10192-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

OC: 09/17/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 12, 2006, reference 01, fact-finder's decision that found the claimant qualified to receive unemployment insurance benefits because the claimant was discharged under nondisqualifying conditions. After hearing notices were mailed to the parties, a hearing was conducted by a telephone conference call from Des Moines, Iowa, on November 1, 2006. The claimant appeared and testified. Participating as a hearing representative was Michelle Igney. Appearing as witnesses were Scott Bieler and Shila Kingsley.

ISSUES:

Did the claimant voluntarily leave employment for reasons that qualify him to receive unemployment 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: Mr. Vlcek was employed by Ameristar Casino from June 23, 2003 until September 14, 2006, when he was discharged from employment. The claimant held the position of cage cashier on a full-time basis and was paid by the hour. His immediate supervisor was Scott Bieler.

The claimant was discharged after inadvertently making a mistake during paying winnings to an Ameristar Casino client. On the night in question the client had presented numerous "quickets," documents for redemption from slot machine winnings. In the process of redeeming the numerous "quickets," two of the documents stuck together and the claimant inadvertently did not remit payment. Subsequently, Mr. Vlcek noted his error and reported the matter to company management as required. As the claimant's discovery of the error balanced his cash drawer for the evening, he felt that the error had been a "wash" and would not be held against him as a violation of policy.

Because the “quicket” error was in the amount of \$310.00 and had exceeded the \$300.00 amount set by the employer as a dischargeable error amount, a decision was made to terminate Mr. Vlcek from his employment. After the claimant had initially reported the error, Brian Stobie, the area manager, had specifically told the claimant that he would not be terminated. When the claimant attempted to report to work on the next working day, he nonetheless was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

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).

In this case the administrative law judge finds that the hearing record establishes that Mr. Vlcek did not intentionally disregard the employer's interests or standards of behavior. The error in question was caused not by carelessness but by circumstances that were largely beyond Mr. Vlcek's control. Of the numerous “quickets” being submitted by the client at that time, two “quickets” stuck together and Mr. Vlcek did not immediately note the error. Through due diligence, however, the claimant noted the error and found the cause of the error and duly reported it to company management. The claimant at that time was specifically told that he would not be terminated because of the circumstances.

It appears that a decision was made to terminate Mr. Vlcek because the cashier error was over a \$300.00 error level that had been set by the employer. The evidence establishes that Mr. Vlcek had self-reported the incident and had taken corrective action to find the error, to correct it and to identify the individual who had not received full remuneration from the casino. Based upon these circumstances, the administrative law judge finds that the evidence does not support a finding that the claimant intentionally disregarded the employer's interests or standards of behavior.

While the decision to terminated Mr. Vlcek may have been a sound decision from a management viewpoint, intentional disqualifying misconduct has not been shown and must, therefore, be held that the claimant was separated under nondisqualifying conditions.

DECISION:

The fact-finder's decision dated October 22, 2006, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions and is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

cs/pjs