

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY KOEHLER
Claimant

APPEAL NO: 09A-UI-01782-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO CO BLUFFS INC
Employer

**OC: 11/16/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Koehler (claimant) appealed an unemployment insurance decision dated January 30, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Ameristar Casino Council Bluffs, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2009. The claimant participated in the hearing with Attorney Matthew Schultz. The employer participated through Emily Jones, Team Relations Manager; Nancy Darcy, Vice-President; and employer representative Francis Landolfi. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time slot technician manager from March 29, 2005 through November 7, 2008 when he was discharged. He received ten disciplinary warnings prior to the last and final written warning issued to him on October 24, 2008. Five disciplinary warnings that were mostly due to performance issues were received by him prior to 2008. A verbal warning was issued to him on February 6, 2008 because a slot machine was found with the incorrect jackpot limit on the game, which resulted in jackpots not locking up at the taxable threshold. The game was signed off by a technical supervisor but was not set up properly. The claimant is ultimately responsible for ensuring the game set-ups are done properly and failure to set up the games properly could make the employer subject to fines. Another verbal warning was issued to him on March 7, 2008 about not coaching his team properly since the coaching appeared to be general statements.

The claimant was warned on March 14, 2008 that he needed to be more confidential about discussions held in his supervisor's office. He was advised that it was not necessary for other

managers to know what was discussed with the claimant about his performance. The claimant was also advised not to discuss one team member's performance in front of another team member. A warning was issued to him on June 18, 2008 after it was discovered during a floor audit that three games had not been enabled. The claimant was again reminded that he was responsible for ensuring the check off sheets were complete and consistent.

The employer issued the claimant a last and final warning on October 24, 2008 with the first item addressing confidentiality or the lack thereof. The claimant all too often shared confidential or inappropriate information with team members and/or discussed private matters with other supervisors on the casino floor. Vice-President Nancy Darcy specifically advised him not to discuss the last and final warning with anyone else as it was confidential. He ignored this warning and was discharged after Ms. Darcy heard from two employees about comments the claimant made in discussing his last and final warning. The claimant was complaining it was not fair and was invalid since he does a great job. He also claimed that another manager was out to get him.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on November 7, 2008 for violating his last and final warning issued on October 24, 2008. He was specifically warned not to discuss his last and final warning but discussed it anyway while at work. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 30, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs