

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA M CHRISTENSEN
Claimant

APPEAL NO: 12A-UI-07132-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS CASINO RESORTS
Employer

OC: 05/20/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 12, 2012, reference 01, that held the claimant was not discharged for misconduct on May 21, 2012, and benefits are allowed. A telephone hearing was held on July 10, 2012. The claimant participated. Vicki Broussard, HR Generalist, and Christy Easton-Mahan, Operations Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 1, 2006, and last worked for the employer as a full-time table games dealer on May 21, 2012. She received the employer policies in an employee handbook. She had worked as a supervisor but returned to games dealer during the latter period of employment.

During the latter period of employment, the claimant had some issues with the poker manager. She was issued a written warning on February 12, 2012 for attending a mandatory meeting when she had received manager permission while the poker room was down. A customer complained about the room being down and the employer held claimant responsible when she had been given permission to attend the meeting. Claimant was not disciplined for refusing to sign the warning.

The employer issued claimant a final warning on May 1 for unprofessional conduct. Claimant denies the allegation and blamed the poker manager for the games problem due to lack of communication.

The employer received a customer complaint against claimant for her dealing conduct on May 15. The employer reviewed the video and concluded claimant should have summoned a supervisor to intervene. The employer concluded claimant failed to follow proper procedure and discharged her on May 21.

The claimant's testimony about what happened when performing her game dealing with two customers on May 15 was far superior in content and understanding than what the employer offered based on a video review. Claimant asserts there was no unusual and/or awkward circumstance that required her to seek a supervisor and there was no customer complaint at the time the game was played. Claimant denies she signed any statement admitting she erred in this matter and the employer failed to offer it as evidence.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on May 21, 2012.

The employer did not establish claimant made any rule or procedure violation when game dealing with two customers on May 15. Her testimony explaining how she handled the game with the customers, their responses and her actions, was far superior to the employer testimony who relied on video review without audio. The employer contends claimant signed a statement admitting an err but failed to offer it as evidence. Job disqualifying misconduct is not established.

DECISION:

The department decision dated June 12, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on May 21, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css