

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D PETERSON
Claimant

APPEAL NO. 07A-UI-09429-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HARVEY'S BR MANAGEMENT CO INC
HARVEY'S CASINO RESORTS**
Employer

**OC: 09-09-07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Peterson filed an appeal from a representative's decision dated October 8, 2007, reference 01, that denied benefits based upon his separation from Harvey's Casino Resorts. After due notice was issued, a hearing was held in Council Bluffs, Iowa on November 7, 2007. Mr. Peterson participated personally. Participating as a witness was his sister, Jean Sorensen. Although duly notified, there were no appearances by the employer. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Peterson was employed by Harvey's Casino Resorts as a full-time security guard from November 3, 2001 until September 13, 2007 when he was discharged from employment. Mr. Peterson was paid by the hour and his immediate supervisor was Mr. Ken Cahill.

At the time of the claimant's discharge on September 13, 2007, it was alleged that the claimant had violated casino policy 11 days earlier by allowing a company employee to enter a secured area without displaying personal identification. The matter was investigated at the time of the incident and a statement was taken from the employee. Although the employer was aware of the incident the claimant was not discharged from employment at that time but allowed to continue working until September 13, 2007.

During the incident on September 2, 2007, Mr. Peterson recognized the female casino worker and believed that she had shown an identification badge in her hand as she passed. Mr. Peterson personally recognized the employee and further verified that the employee had security access codes to the secured area. The claimant believes he was not given an opportunity to present his side of the events before being discharged by the company. It is the

claimant's further belief that his discharge was unjustified and may have been caused by dislike of the claimant by his new immediate supervisor.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant engaged in willful disqualifying misconduct at the time of separation. It does not. The evidence in this case establishes that on the day in question Mr. Peterson believed that he was fully complying with all casino regulations related to identifying employees entering into a secured area of the casino facility. The claimant personally recognized the female worker who was entering, personally acknowledged the individual and was acknowledged back by the individual and in addition the claimant believes that the female worker displayed what appeared to be a casino identification badge upon entering. Although the employer became aware of the incident that day, the employer took no action for 11 additional days and allowed the claimant to continue working. During the extended time between the incident and the claimant's discharge, he was allowed to continue working and was given no indication that his actions violated company policy or were otherwise unacceptable.

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.

For the reasons stated herein, the administrative law judge finds that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant at the time of separation. The claimant did not knowingly violate a company rule and the claimant's termination from employment on September 13, 2007 was not based upon a current act of misconduct. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 8, 2007, reference 01, is hereby reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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