

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DONALD A LEAFTY
443 S 1ST ST
COUNCIL BLUFFS IA 51503

HARVEYS BR MANAGEMENT CO INC
HARVEYS CASINO RESORTS
2701 – 23RD AVE
COUNCIL BLUFFS IA 51501

Appeal Number: 05A-UI-08292-HT
OC: 07/17/05 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Harvey's Casino Resorts (Harvey's), filed an appeal from a decision dated August 8, 2005, reference 01. The decision allowed benefits to the claimant, Donald Leafy. After due notice was issued a hearing was held by telephone conference call on August 29, 2005. The claimant received the notice of the hearing but submitted a written statement to the Appeals Section that he would not participate, and did not offer any additional information on the issue of his separation. The employer participated by Senior Employee Relations Representative Tanya Achenback and Cashier Manager Leann Davis.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Donald Leafy was employed by Harvey's from October 21, 2002 until July 16, 2005. He was a full-time cashier technician.

During the course of his employment the claimant received three written warnings and several informal counselings regarding performance issues. He had left machines unlocked, money on top of a machine and filled a redemption machine improperly. The counselings were about his need to learn to prioritize his work, with those tasks dealing directly with customer service always coming first. The final written warning was given on April 18, 2005 and notified him the next disciplinary step could result in discharge.

On July 11, 2005, the claimant was cleaning a machine, which was not related to any customer service matters. He received a call from a supervisor, Jennifer Rief, to go to the reception area to escort a vendor representative who was there to fix a redemption machine. Vendors cannot be on the casino floor without an employee to escort them. The machine to be fixed was directly related to customer service and therefore had priority. Mr. Leafy replied that he would be down when he was done, and continued to clean the machine.

Ms. Rief called him some time later and told him to go and escort the vendor representative and he replied that he "didn't even know he was coming." The supervisor told him another supervisor had called the vendor and Mr. Leafy said, "That's what you get." It was his tone the supervisor found to be unacceptable as well as his attitude. He continued to clean the machine and kept the vendor waiting even longer before finally going to the reception area to escort him.

The supervisor notified Cashier Manager Leann Davis who talked to the claimant later in the day. She asked him if he had understood the prior counselings about prioritizing his tasks so that customer service related matters were of the most importance. He said he did and when asked why he had refused to go to the reception area to escort the vendor representative, his only response was that "I did not know he was coming."

Mr. Leafy was off work for the next four days and when he returned to work on July 16, 2005, he was discharged by Ms. Davis.

The claimant filed for unemployment benefits with an effective date of July 17, 2005. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

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).

The claimant had been advised his job was in jeopardy as a result of his poor work performance. None of the incidents for which he was warned was a task for which he might have lacked the skill or training, but constituted negligence in leaving machines unlocked or money unattended on top of a machine. In spite of the warning the final incident was a refusal to escort a vendor representative through the casino so that a piece of customer service equipment could be repaired.

Mr. Leafy had been counseled about the importance of putting customer service tasks first but he willfully refused to leave his task of cleaning a piece of equipment which was not related to customer service in order to escort the vendor representative through the casino. He had no reason for failing to do this other than that no one had told him in advance the vendor had been called. This does not excuse his refusal to follow a direct order from his supervisor, one that was given twice and ignored both times until the claimant finished the task he was doing. Failure to follow the direct order of a supervisor is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of August 8, 2005, reference 01, is reversed. Donald Leafy is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/pjs