

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES YATES**

Claimant

**HARVEYS BR MANAGEMENT CO INC**

Employer

**APPEAL NO: 12A-UI-12384-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09-16-12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 5, 2012, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 7, 2012. The claimant participated in the hearing. Vicki Bassard, Human Relations Generalist, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dealer for Harveys Casino Resorts from June 7, 2011 to September 18, 2012. He was discharged for harassing and intimidating conduct toward a female co-worker through text messages. On September 12, 2012, Lindsey, complained to Human Resources that the claimant was harassing her. Her boyfriend was also an employee of the casino. The claimant had a past sexual relationship with Lindsey.

On September 6, 9 and 13, 2012, the claimant sent increasingly insistent text messages to Lindsey to call him or he would effectively tell her boyfriend about their sexual relationship (Employer's Exhibit One). On September 6, 2012, at 10:46 a.m., he texted, "don't think I'm gonna just go away quietly there will be fall out" (Employer's Exhibit One). On September 13, 2012, at 9:33 a.m., he wrote, "If u would only talk 2 me we could figure it out but up 2 this point u have been totally Unwilling 2 do so. I did not want 2 come between the 2 of u as I know he is ur security Blanket. I just want a lil of yr time & attn. I am willing 2 make a deal with u c me in the next cpl days 2 talk & then b with me 2 more times sexually & we can re-evaluate whether we want 2 continue 2 b intimate or not? Can we make that agreement?" (Employer's Exhibit One). On September 13, 2012, at 9:36 a.m. he stated, "Call me 2day or all bets off & we go back 2 square one & u will hate me 4 actions I take" (Employer's Exhibit One). He followed that message at 9:42 a.m. by saying, "B4 u start work would b best so I don't sit & stew bout it all day this will be taken care of one way or the other 2DAY & im 2 the point I don't care which way"

(Employer's Exhibit One). At 9:59 a.m. he stated, "if I don't hear from u by call or text I have no idea who u think u r but u will not treat me with such disrespect!" At 10:14 a.m. he wrote, "Ive tried it ur way now we will c how u like my way I am so done with this bullshit" (Employer's Exhibit One). At 10:47 a.m. he stated, "Have a great day/life sure 2nite will b rough but I don't think he will leave u cuz without u he would have nothing" (Employer's Exhibit One). At 11:21 a.m. he said, "Go ahead & ignore me fyi kev should be getting the msg that an individual called & would like 2 talk 2 him personally when he gets off work" (Employer's Exhibit One). At 11:23 a.m. he wrote, "Either u talk 2 me or im done & will go 2 that meeting," and then at 11:30 a.m., "Just in case u think im bluffing the pencil at harras # is 3296236" (Employer's Exhibit One). At 11:37 a.m. he texted, "ASOLUTE LAST CHANCE CALL/TEXT B4 I GO 2 RALLY OR I PROMISE U I WILL DO EVERYTHING I HAVE SAID I WOULD AT THE VERY LEAST" followed at 11:50 a.m. by, "This will b my last text b4 I delete ur # I hope u take me serious & consider talking 2 me b4 3 when I come 2 the rally I will hate hurting u but hurting me obviously doesn't bother us so so be it PLEASE CALL./TEXT so im not forced 2 do something I really don't want 2 just 2 prove a point (Employer's Exhibit One). The employer conducted an investigation, in conjunction with the Division of Criminal Investigation, after Lindsey went to Human Resources. The employer then terminated the claimant's employment September 18, 2012, for violating its zero tolerance for harassment and stalking policy.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant sent at least 20 harassing text messages to Lindsey between September 6 and September 13, 2012. He was effectively trying to extort sex from her by threatening to tell her boyfriend about their fling if she did not have sex with him "two more times." While the claimant testified he was simply going to tell her boyfriend she wanted to commit suicide two weeks earlier and was having financial problems, his text messages belie that statement. If he truly wanted to help her, the correct course of action would be to leave her alone when it became clear she did not wish to see him or talk to him. His text messages leave no doubt that he was threatening to tell Lindsey's boyfriend about their sexual relationship and not that he was telling her he was going to talk to her boyfriend out of concern for her regarding other issues. He refused to accept the fact she obviously did not wish to speak to or see him any longer and resorted to threats to try to force her to talk to him, see him and have sex with him. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The October 5, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css