

**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**

**JULIE A RICH  
APT 2  
416 S 28<sup>TH</sup> ST  
COUNCIL BLUFFS IA 51501-3515**

**HARVEYS CASINO RESORTS  
2701 – 23<sup>RD</sup> AVE  
COUNCIL BLUFFS IA 51501**

**Appeal Number: 06A-UI-04975-HT  
OC: 04/16/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Harvey's, filed an appeal from a decision dated May 3, 2006, reference 01. The decision allowed benefits to the claimant, Julie Rich. After due notice was issued, a hearing was held by telephone conference call on May 24, 2006. The claimant participated on her own behalf. The employer participated by Senior Employee Relations Representative and Cashier Manager Leanne 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: Julie Rich was employed by Harvey's from August 2, 2000 until April 13, 2006. She was a full-time cashier.

Cashiers must count down their cash drawers at the end of each shift. If there is a variance, that is, more or less money in the drawer than there should be, points are assessed according to the amount. Disciplinary action is given at specified intervals when certain point levels are reached. Any cashier who has accumulated 11 points in a rolling 12-month period is subject to discharge.

Ms. Rich received a final written warning in January 2006 when she had accumulated 7.5 points. On April 9, 2006, she had a variance of \$200.00, and was suspended pending further investigation. The surveillance tapes were reviewed by representatives of two different departments and it was determined that Ms. Rich had paid out \$200.00 to a customer in excess of the actual chip value. This variance was assessed at four points putting her total at 11.5. She was discharged by Cashier Manager Leanne Davis on April 13, 2006.

Julie Rich has received unemployment benefits since filing a claim with an effective date of April 16, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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 her job was in jeopardy as a result of the number of variances she had in the past year. Ms. Rich maintains the error was due to her unfamiliarity with the chips, but acknowledged that she had received training on chip handling and their values, and also exercises with her supervisor. If she felt more training was necessary it was her responsibility to pursue the matter through the proper channels. Her failure to maintain the assets of Harvey's Casino is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 3, 2006, reference 01, is reversed. Julie Rich is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,108.00.

bgh/kkf