

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DALE K JONES**  
Claimant

**APPEAL NO. 13A-UI-06540-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEY'S CASINO RESORTS**  
Employer

**OC: 04/28/13  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Harveys Casino Resorts (Harveys), filed an appeal from a decision dated May 24, 2013, reference 01. The decision allowed benefits to the claimant, Dale Jones. After due notice was issued a hearing was held by telephone conference call on July 9, 2013. The claimant participated on his own behalf. The employer participated by Table Games Supervisor Shawn Guinan and Human Resources Manager Shari Armstrong.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Dale Jones was employed by Harveys from April 24, 2007 until May 2, 2013 as a full-time table games dealer. He had received verbal and written warnings for poor work performance and failing to follow specific guidelines for dealers. The final written warning was given January 10, 2013, and notified him his job was in jeopardy.

On April 7 and 13, 2013, he failed to “burn” a card from the front of the blackjack card shoe. This is required by the Iowa Racing and Gaming Commission policies. He got two verbal warnings for these incidents. The employer’s practice is to remind employees of initial mistakes rather than going directly to discharge. But on April 28, 2013, he again failed to burn the first card in the shoe. This was reported and he was discharged on May 2, 2013, for a third incident in less than a month.

Dale Jones has received unemployment benefits since filing a claim with an effective date of April 28, 2013.

## 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.

The claimant had been advised his job was in jeopardy as a result of his failure to follow required procedures. He acknowledged he failed to burn the card on three occasions in April 2013. His contention that it was a mistake is valid, but considering his years of experience as a table games dealer, it is inexplicable that such a mistake would have been made three times in such a short period of time.

Under the provisions of the above Administrative Code section, carelessness of such a degree is considered on the same level as willful misconduct. The administrative law judge concludes the claimant's excessive carelessness constitutes a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of May 24, 2013, reference 01, is reversed. Dale Jones is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs