

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA BELL**  
Claimant

**APPEAL NO: 10A-UI-00649-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEYS BR MANAGEMENT CO INC**  
Employer

**OC: 11-29-09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 18, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 10, 2010. The claimant participated in the hearing. Lydia Mason, Director of Gaming Operations and Thelen Blood, Human Resources Manager, 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 slot attendant for Harveys Casino Resorts from June 5, 2007 to November 28, 2009. She worked the 11:00 p.m. to 7:00 a.m. shift. On November 21, 2009, the employer held its regular pre-shift meeting and the department manager mentioned that an employee had brought in discount coupons from a local sporting goods store and the claimant commented to an employee next to her she thought was a friend that she “could use this coupon to purchase a weapon” and then started laughing but the rest of the team overheard her comment and she could tell they were concerned and dismayed so she said, No, no, no. Let me explain.” The claimant testified the night before she saw something on television or in the news which prompted her to say, “Sometimes don’t you wish we could all have one justifiable homicide?” The other employees did not perceive her comment in the pre-shift meeting as a joke and were uncomfortable but were not concerned about their own safety but rather that of people in general. The manager talked to the claimant about her comment November 22, 2009, and the claimant admitted making the statement and that it was in poor taste. Other employees were still bothered by the claimant’s remark so the employer suspended her November 23, 2009, pending further investigation. Assistant Manager of Casino Operations Jamie Clippinger told Director of Gaming Operations Lydia Mason the claimant made “bizarre” comments such as, “I know who did this” and “I will never talk to anyone anymore” and indicated she was angry because she felt people did not understand her. The claimant then vomited and had an anxiety attack before Ms. Clippinger calmed her and she

went home. After Ms. Mason talked to the team and spoke to the claimant herself she thought the claimant was a potential risk to the team, although she does not know what the claimant said or did not say to make her think that, but decided she was unwilling to take any risks. The employer terminated the claimant's employment November 28, 2009. The claimant had not received any previous written warnings.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant is correct that her comment showed "bad judgment" and was in "poor taste," the administrative law judge believes she was joking but did not fit in well with her colleagues so they misconstrued the statement and perceived it as threatening because they did not feel trust toward or friendship for

the claimant. Although not condoning the claimant's remark it is not unreasonable to believe she made the "justifiable homicide" comment in response to something on television or in the news. Consequently, this was an isolated incident of poor judgment and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The December 18, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs