

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON L CARTER
Claimant

APPEAL NO. 12A-UI-08869-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
HARVEYS CASINO RESORTS
Employer

OC: 06/24/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 20, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 16, 2012. Claimant participated. The employer participated by Ms. Vicky Broussard, Human Resource Generalist and Ms. Deanna Potvin, Table Game Supervisor/Scheduler.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Cameron Carter was employed by Harvey's Casino Resorts from October 20, 2008 until June 28, 2012 when he was discharged from employment. Mr. Carter worked as a part-time table dealer and was paid by the hour. His immediate supervisors were Bob Zink and Deanna Potvin.

Mr. Carter was discharged from his employment with Harvey's Casino Resorts after he exceeded the permissible number of attendance infractions allowed under established company policies. Under the company's attendance policies employees are allowed to accumulate ten attendance infraction points during a rolling time period. Mr. Carter was aware of the policy and had been counseled about the number of attendance infraction points that he had accumulated.

Mr. Carter was discharged when he failed to report or provide any notification for his failure to work on June 25, 2012. On that day Mr. Carter had specifically agreed to replace another employee who wanted off work that day. The claimant forgot that he had agreed to replace the other worker and therefore did not report for work or provide notification. Because failure to report without notification results in the accumulation of five infraction points, the claimant was discharged from employment. Mr. Carter had accumulated eight infraction points before the final incident. Although company employees are informed in the handbook of their right to

appeal employment decisions that they do not agree with within the company, Mr. Carter did not exercise that right.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

No aspect of the contract of employment is more basic than the right of an employer to expect employees will appear at work on the hour and day agreed upon. Recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and thus may justify a finding of misconduct in connection the work.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to work. Inasmuch as the evidence in the record establishes that the claimant had exceeded the permissible number of attendance infraction points allowed in a rolling one-year period by being absent on a number of occasions and that the claimant's most recent attendance infraction took place when he agreed to replace an employee but did not do so and provided no additional notification to the employer, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated July 20, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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