IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARGOTH V FLORES
Claimant

"HARVEYS BR MANAGEMENT CO INC
"HARVEYS CASINO RESORTS
Employer

APPEAL NO. 10A-UI-02856-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/17/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Margoth Flores filed a timely appeal from a representative's decision dated February 12, 2010, reference 01, which denied benefits based upon her separation from Harvey's Casino Resorts. After due notice, a telephone conference hearing was held on April 5, 2010. Ms. Flores participated personally. Participating on behalf of the claimant was Mr. Joe Basque, Attorney at Law, Iowa Legal Aid Society. The employer, Harvey's Casino Resorts, who had failed to comply with discovery, did not respond to the hearing notice and did not participate.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge concludes: Margoth Flores was employed by Harvey's Casino Resorts as a full-time waitress from April 16, 2009 until January 12, 2010 when she was discharged from employment. Ms. Flores was paid by the hour and was under the supervision of "Jennifer" last name unknown.

Ms. Flores was discharged without advanced notice on January 12, 2010. Although the claimant requested a reason for her termination, the employer did not provide a reason to the claimant. Ms. Flores believed that she was following company procedures and was not aware of any violations at the time of her discharge.

REASONING AND CONCLUSIONS OF LAW:

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. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate,

intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Ms. Flores was discharged without advanced notice on January 12, 2010. Although the claimant requested a reason for her discharge, the employer did not provide that information to the claimant. The claimant was not aware that she had violated any company policies or procedures at or near the time of discharge.

Based upon the evidence in the record and the application of the law, the administrative law judge concludes that the employer has not sustained its burden of proof in showing conduct that showed a willful disregard of the employer's interests or standards of behavior. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 12, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs