

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN S PLATZER**

Claimant

**APPEAL NO. 10A-UI-03976-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"HARVEYS BR MANAGEMENT CO INC**

**"HARVEYS CASINO RESORTS**

Employer

**OC: 02/07/10**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 4, 2010, reference 01, that denied benefits based upon his separation from Harvey's Casino Resorts. After due notice, a telephone hearing was held on April 28, 2010. Claimant participated personally. The employer participated by Tanya Achenbach, Human Resource Generalist, and Mr. Rory DeSantiago, Racing Director. Employer's Exhibits One through Four were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record the administrative law judge finds Ryan Platzer was employed by Harvey's Casino Resorts as a part-time dog track lead out worker from September 1, 2009 until February 9, 2010 when he was discharged based upon complaints of harassment from other lead out workers.

On February 6, 2010, a number of lead out workers complained in mass that Mr. Platzer had been making inappropriate sexually explicit rude comments to and about co-workers. The matter was investigated and statements were obtained from other lead outs indicating that the claimant had repeatedly engaged in that activity. Mr. Platzer was interviewed and admitted a number of comments but denied making others. As the employer has a zero tolerance policy for harassment of any nature and the claimant was aware of the policy and had previously been warned for violating lead out rules, a decision was made to terminate Mr. Platzer from his employment.

It is the claimant's position that he at times was subjected to name calling as well. Prior to his discharge, Mr. Platzer had not complained to management that the company's zero tolerance policy was being violated.

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

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct 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.

The evidence in the record establishes that Mr. Platzer was aware of the company's zero tolerance policy towards harassment and that the claimant had been warned for violating lead out work rules on December 12, 2009. (Exhibit Two) When questioned the claimant admitted to violating the procedure by making numerous inappropriate comments although the claimant denied making some of the comments attributed to him.

The administrative law judge finds based upon the previous warning served upon the claimant and his knowledge of the company's zero tolerance policy that his conduct showed a disregard for the employer's interests and standards of behavior that the employer had a reasonable right to expect of its employees and thus was disqualifying conduct. Benefits are withheld.

**DECISION:**

The representative's decision dated March 4, 2010, 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, provided that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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