

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY R BLOND
Claimant

APPEAL NO. 13A-UI-05513-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 04/14/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 3, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicki Broussard participated in the hearing on behalf of the employer with a witness, Tim Howarth. Exhibits 1-6 were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a table games supervisor from September 29, 2009, to April 8, 2013. She was informed and understood that under the employer's work rules, employees were only allowed to have water, breath mints, and cough drops on the gaming floor and were prohibited from eating food or drinking pop or other beverages while on the floor. Table game supervisors were required to protect the games by carefully watching employees and player to make sure nothing improper was occurring.

The claimant had received previous discipline for (1) not securing desks of cards (January 28, 2011), (2) making inappropriate comments of a sexual nature (April 4, 2012), and not noticing an overpayment on a bet to a guest (January 4, 2013). The January 2013 warning was a final written warning and she was advised that she could be terminated for further policy violations.

On March 30, 2013, the employer found cookies and pop cans in the claimant's work area. Supervisors reviewed surveillance video from March 29, which showed the claimant talking to another supervisor or dealer on several occasions and not watching the game she was assigned. She also was observed eating in front of guests. She was seen serving herself pop and drinking pop in front of guests.

The claimant was suspended on April 3 for her actions on March 29. After the investigation was completed, the employer discharged the claimant on April 8, 2013.

The claimant filed for and received a total of \$3,699.00 in unemployment insurance benefits for the weeks between April 14 and June 15, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Howarth's testimony that the claimant was not attentive to the game she was assigned to watch. The fact that the claimant saw others also violating the no eating and drinking rule does not establish that management condoned such conduct. She knew she was violating the employer's policy through her actions.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated May 3, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise

eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css