

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**NATALIE F MENDEZ  
649 PARKWILD DR #H-4  
COUNCIL BLUFFS IA 51503-1749**

**HARVEY'S IOWA MANAGEMENT CO INC  
HARRAH'S COUNCIL BLUFFS CASINO  
1 HARVEY'S BLVD  
COUNCIL BLUFFS IA 51501**

**Appeal Number: 06A-UI-04296-CT  
OC: 03/26/06 R: 01  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Harrah's Council Bluffs Casino (Harrah's) filed an appeal from a representative's decision dated April 14, 2006, reference 01, which held that no disqualification would be imposed regarding Natalie Mendez' separation from employment. After due notice was issued, a hearing was held by telephone on May 24, 2006. Ms. Mendez participated personally. The employer participated by Larry Garvey, Shift Manager; Tonya Achenbach, Senior Employee Relations Representative; and Brooke Cooley, Shift Supervisor.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mendez was employed by Harrah's from June 1, 2000, until March 24, 2006, as a full-time beverage server. The decision to discharge her from the employment was prompted by the fact that she and a coworker conspired to slow down the break system. The employer has a "breaker," whose job is to relieve other servers when the servers go on break. On March 23, the breaker was Jeannie. On that date, she and Ms. Mendez decided to slow down their breaks so that they could spend more time working together. Their conversation on the matter was overheard by another employee, who reported it to management.

On March 23, Ms. Mendez took five minutes more than allowed for her 30-minute break. She took 12 minutes more than allowed for her 15-minute break. She stopped to talk to a guest she knew on the way from her 15-minute break. The employer felt the extended breaks were consistent with the stated purpose of slowing down breaks. It usually takes 5.25 hours to complete all breaks during the shift. On March 23, not all breaks were given. As a result of this final incident, Ms. Mendez was notified of her discharge on March 24, 2006.

In making the decision to discharge Ms. Mendez, the employer also considered other disciplinary action taken in the past. On February 10, 2005, she received an informal coaching because she had not been claiming her tips in the manner required by the Iowa Racing and Gaming Commission. She was to claim \$6.44 per hour as tips and Ms. Mendez had been trained on this issue. She received a written warning on May 9, 2005, because she was again not claiming her tips properly. Ms. Mendez received a final written warning on December 3, 2005, after she threatened a coworker. She told the coworker that she would kick her ass if she went into her section.

Ms. Mendez filed a claim for job insurance benefits effective March 26, 2006. She has received a total of \$2,051.00 in job insurance benefits since filing her claim.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Mendez was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Mendez knew her continued employment with Harrah's was in jeopardy based on the final warning she received on December 3, 2005. In spite of this knowledge, she acted in a manner that was contrary to the employer's standards on March 23, 2006. She and a coworker decided to slow down the breaks.

Ms. Mendez contended that she and the coworker were only joking when they were having the discussion of slowing down breaks. However, the fact that Ms. Mendez took more time than allowed on both her 30-minute and her 15-minute break suggests that the two were not joking. Ms. Mendez contended that she was prevented from returning from her 15-minute break because she was stopped by a guest. She and the guest were simply talking. Although the guest may have taken her by the arm, the administrative law judge is not convinced that she could not have left whenever she wanted to. Ms. Mendez was not discharged because she took longer than allowed for breaks, but because she did so with the intent of delaying breaks.

for others. Her conduct was clearly contrary to the type of conduct the employer had the right to expect. Her conduct resulted in other employees not receiving the breaks they were entitled to receive and the employer was obligated to give.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving that Ms. Mendez was discharged for misconduct. Accordingly, benefits are denied. Ms. Mendez has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated April 14, 2006, reference 01, is hereby reversed. Ms. Mendez was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Mendez has been overpaid \$2,051.00 in job insurance benefits.

cfc/kjw