

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE A SEUSS
Claimant

APPEAL NO. 10A-UI-05767-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO**
Employer

**OC: 03/14/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 5, 2010, reference 01, that denied benefits based upon her separation from Harrahs Council Bluffs Casino. After due notice, a telephone hearing was held on June 9, 2010. The claimant participated personally. The employer participated by Ms. Tonya Achenbach, Human Resource Generalist and Mr. James Yoshida, Cashier/Manager.

ISSUE:

At 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: Joyce Seuss was employed by Harrahs Council Bluffs Casino from September 8, 2003 until March 4, 2010 when she was discharged from employment. Ms. Seuss worked as a full-time lead vault cashier and was paid by the hour. Her immediate supervisor was Cathey Wright.

The claimant was discharged for failing to report to work for a work shift on February 27, 2010. Ms. Seuss has volunteered to work as a vault cashier for a special event being held that day at a different facility. The claimant did not report to work as expected because of a problem with her alarm clock. The claimant had set her alarm but another family member had shut it off not knowing that the claimant was required to work.

Company employees are subject to discharge if they exceed the permissible number of attendance infraction points allowed by company policy. Ms. Seuss was aware of the policy and had received a documented consultation, a written warning and a final warning about attendance prior to being discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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 evidence in the record establishes that Ms. Seuss had been previously warned about attendance issues and was aware that she would be subject to discharge if she continued to be absent or tardy. The claimant volunteered for a work shift at a special event that was being held on February 27, 2010 and failed to report or provide notification. The claimant's reason for not reporting or providing notification was that she had overslept because a family member had tampered with the alarm clock. Although sympathetic to the claimant's situation, the claimant's oversleeping was a matter of personal responsibility. The employer's expectation that the claimant would report for scheduled work or provide notification was reasonable especially in light of the previous warnings that had been served upon Ms. Seuss. Benefits are withheld.

DECISION:

The representative's decision dated April 5, 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 her weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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