

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND A STAFFORD
Claimant

APPEAL NO: 19A-UI-00927-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 01/06/19

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Harvey's Branch Management Company Inc., the employer, filed a timely appeal from a representative's unemployment insurance decision dated January 24, 2019, (reference 01) which held Mr. Stafford eligible to receive unemployment insurance benefits, finding that he was dismissed from work on January 3, 2019, but finding that the record did not show willful or deliberate misconduct. After due notice was provided, a telephone hearing was held on February 15, 2019. Claimant participated. Employer participated by Mr. Dennis Mullens, Hearing Representative; and witness Ms. Salia Nazarie, Human Resource Manager. Employer's Exhibits 1 through 4 and Agency Exhibit D1 were admitted into the hearing record.

ISSUES:

The first issue is whether Mr. Stafford was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

The second issue is whether Mr. Stafford was overpaid unemployment insurance benefits.

The third issue is if Mr. Stafford was overpaid unemployment insurance benefits, is he liable to repay the overpayment or should the employer be charged based upon the employer's participation in the fact-finding interview.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Raymond Stafford was employed by the employer, dba Harrah's Casino, from January 4, 2017 until January 3, 2019, when he was discharged. Mr. Stafford most recently worked as a VIP coordinator, providing guests assistance to high-end patrons. Mr. Stafford was paid by the hour. His immediate supervisor was Kelly Rhoten.

Mr. Stafford was discharged on January 3, 2019, based upon an incident that took place on December 29, 2018. On that date, Mr. Stafford was on duty, but experienced computer issues

throughout the workday. Mr. Stafford had complained to his immediate supervisor about the recurring computer problem that hindered him in his work.

When a lead person working in the room observed Mr. Stafford becoming increasingly agitated because of the computer issues, she instructed Mr. Stafford to go home for the day.

It appears that Mr. Stafford was further upset by the lead person's directive and verbalized his dissatisfaction by stating aloud that he was being "punished" by the company. Mr. Stafford then threw a player's identification card across the room, inadvertently striking a television control switch and turning off the device.

Mr. Stafford's conduct was reported by the lead person and by a guest who observed Mr. Stafford's conduct.

Mr. Stafford was called into a meeting on January 1, 2019 and questioned about the incident. During the meeting, Mr. Stafford admitted he threw the card, stating that his intent was to throw it into a waste receptacle. He admitted vocalizing his dissatisfaction being settled by saying that he was being "punished". The employer further considered the matter. Ms. Salia Nazarie reviewed the company security surveillance tape of the incident. After confirming the statements about the incident made by the lead person and the casino guest, a decision was made to terminate Mr. Stafford from his employment.

Mr. Stafford was verbally reminded in January 2018 to be professional at all times while performing his duties. On August 16, 2018, Mr. Stafford received a written warning after he forcefully pushed a keyboard and threw papers in the air at work and his conduct was witnessed by a guest. During the disciplinary meeting of August 16, 2018, Mr. Stafford referenced his frustration with factors that prevent him from performing his duties. He was advised that in those instances he should bring his frustrations to the attention of his supervisors or managers. The warning further reminded Mr. Stafford that the company's conduct standard requires employees demonstrate courtesy, friendliness, and a positive attitude to guests and co-workers and warned Mr. Stafford to refrain from any actions related to use of physical force or intimidation. Mr. Stafford was given the caveat that any additional violations would result in further disciplinary action up to and including termination from employment.

It is Mr. Stafford's position that he was frustrated by on-going computer issues that day. He was further upset when he was told to go home for the remainder of the day without explanation. He does not recall if he made a statement about the company punishing him, but asserts that if he did, the statement was not directed to any particular person. It is Mr. Stafford's further assertion that the patron identification card was not thrown forcefully or in anger, but that he merely tossed the card towards an area where a waste receptacle was previously located.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

In the case at hand, Mr. Stafford was discharged after the employer reasonably concluded based upon the personal observation of security tapes and a statement of a guest and another employee, that Mr. Stafford violated the terms of an earlier warning issued to him by acting aggressively and inappropriately on December 29, 2018. On that date, Mr. Stafford was upset because of on-going computer problems when a lead person who was working with Mr. Stafford noticed that the claimant was becoming increasingly upset, Mr. Stafford was sent home for the remainder of the day. Instead of accepting the directive from the lead person, or going to the company's human resource department to dispute it, Mr. Stafford instead vocalized his dissatisfaction by stating that he was being "punished" by the company aloud in an area of the casino where higher end patrons could hear. In conjunction with his statement of dissatisfaction, the evidence establishes that Mr. Stafford forcefully threw a patron identification card across the room with sufficient force to strike a TV control shutting off the television.

The claimant's conduct was considered to be misconduct by both the lead person working with Mr. Stafford as well as a casino patron who observed Mr. Stafford's conduct and personally reported to the company in the form of a complaint.

Because the claimant was previously warned for the same or similar conduct in disregard for the employer's interests and reasonable standards of behavior it expects of its employees, a decision was made to terminate Mr. Stafford from his employment.

Although the administrative law judge is aware that Mr. Stafford maintains that he otherwise was a good employee and had an impeccable record, the issue before the administrative law judge is not Mr. Stafford's good performance but whether the employer sustained its burden of proof to show the claimant's conduct rose to the level of misconduct sufficient to warrant the denial of unemployment insurance benefits.

Although the administrative law judge is sympathetic to Mr. Stafford's situation, the administrative law judge concludes that the evidence in the record is sufficient to establish work-connected misconduct. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated January 24, 2019, reference 01 is reversed. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible for benefits.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn