

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

KAREN L BRYEN
1806 AVE C
COUNCIL BLUFFS IA 51501

HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO
1 HARVEYS BLVD
COUNCIL BLUFFS IA 51501

Appeal Number: 04A-UI-11446-DWT
OC: 10/03/04 R: 01
Claimant: Appellant (1)

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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Karen L. Bryen (claimant) appealed a representative's October 19, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Harvey's Iowa Management Company, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Carolyn Beno, the cashier manager, and Tanya Achenbach appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 18, 1995. She worked full time as a main banker. The claimant knew the employer could discipline an employee according to its variance policy when cashiers had a difference between the end of the drawer account and the amount a cashier should have.

The claimant's job was not in jeopardy prior to September 29, 2004. But in late 2003, the claimant received warnings for failing to follow the employer's procedures regarding the recording of checks, cashing checks and exceptions in paperwork. The claimant had never had a large variance or made an accounting error, as she did on September 29, 2004.

When the claimant did paperwork on September 29, 2004, she wrote \$8,753.24 and she should have written \$18,753.24. The claimant knew she had a variance of \$10,000.00 but did not know how or where she made the mistake. A lead cashier found the claimant's mistake or error.

The employer's written variance policy informs employees that when a variance is more than \$1,000.00 management has discretion to discharge or implement another discipline. The employer decided to discharge the claimant for the \$10,000.00 variance the claimant recorded on her September 29, 2004 paperwork.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant did not participate in the hearing, it is not known how the variance occurred or what she did in an attempt to find the \$10,000.00 error. Without any input from the claimant, a preponderance of the evidence indicates the employer discharged her for reasons amounting to work-connected misconduct. As of October 3, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 19, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that amount to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 3, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf