

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT MULVEY
Claimant

APPEAL NO: 12A-UI-04016-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS CASINO RESORTS
Employer

**OC: 03/11/12
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Harveys Casino Resorts (employer) appealed an unemployment insurance decision dated April 6, 2012, reference 01, which held that Robert Mulvey (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2012. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Annette Grote, Human Resources Generalist and Bob Zink, Casino Manager. Employer's Exhibit One through 13 were admitted into evidence. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from June 7, 1993 through March 15, 2012 and was most recently working as a table game supervisor. The employer discharged him pursuant to its progressive disciplinary policy with a final incident on March 10, 2012 when he failed to follow multiple policies, some of which are required by state law. As a table game supervisor, the claimant was responsible for his own performance and that of his subordinates, which included the need to ensure all paperwork was properly completed. The claimant received a performance documentation on January 28, 2011 after four decks of playing cards were found unsecured in two separate pit stand drawers. The claimant had placed them there but did not initially advise the supervisor who took over for him. He subsequently called that supervisor to inform her about it but the supervisor did not secure the cards and they were found on the following morning.

The employer issued a verbal warning on February 11, 2011 for his failure to ensure the dealer added his employee number to a game opener slip on February 5, 2011. He failed to verify and sign a jackpot slip on March 4, 2011. The claimant did not provide a voided comp or print screen on a comp exception log on April 19, 2011. On that same date, he failed to ensure a second verification signature on a jackpot over \$10,000.00 and he listed an incorrect machine number on a Signature Verification Exception Report on May 4, 2011. The employer counseled him on each of these issues.

The claimant received a written warning on July 12, 2011 for having a personal/romantic relationship with a subordinate which is a violation of the employer's Code of Conduct Standard 20 and the Nepotism Policy. The employer placed him on a final written warning on October 1, 2011 for violating four policies. The claimant attended a VIP player only event on September 26, 2011 which is a violation of the employer's Team Member's Participation in Events/Entertainment Policy. Team members may not participate in play based events/entertainment and may not attend with a guest. While attending the event, the claimant had a conversation with another employee regarding the performance of a Diamond Lounge employee. He discussed a specific incident that occurred with this employee and stated that, "He did not care for the employee and that he should have been fired."

These comments violated the employer's Code of Conduct Standard 1 which provides that, "Team members will demonstrate courtesy, friendliness, appropriate greetings, initiative to assist, and professional language/tone/manners/actions with guests, co-workers and vendors." The comments were also a violation of Code of Conduct Standard 10 which states, "Team members will not reveal confidential Company information to unauthorized persons." Additionally, the claimant violated Code of Conduct Standard 12 which requires team members to use "professional judgment" and to "refrain from acts of gross misjudgment, carelessness and negligence" in the performance of one's job. This policy also prohibits "any serious conduct detrimental to the orderly and ethical operation of the business." The warning advised him that any further substandard performance or violations of departmental policy, procedures or standards could result in further disciplinary action up to and including termination.

The claimant received a verbal warning on September 11, 2011 for accepting a slot play coupon at one of the table games. The employer issued him a final written warning reminder on October 8, 2011 for another violation of the Code of Conduct Standard 1 after the claimant was observed "walking hand in hand with his girlfriend, a beverage server, in a customer contact area." He was advised he needed to conduct himself professionally at all times while at work and should not demonstrate affectionate behaviors towards his girlfriend within the workplace. A second verbal warning was issued on February 12, 2012 after the claimant accepted a coupon from a different casino.

The final incident occurred on March 10, 2012 when the claimant committed several procedural errors in the table games department. Since he was on a final written warning and a reminder to the final written warning, he was discharged for failure to follow procedures and for his poor judgment during the handling of this incident. His conduct was a violation of Code of Conduct Standard 12 and Code of Conduct Standard 16 which provides that, "Team Members will obey all company rules, department policies and procedures, supervisor's instructions, regulations and/or statutes of local, state and federal governmental agencies including those prescribed by the IRGC. Team members will follow all posted, stated or commonly known rules, policies and procedures."

On March 10, 2012 a black jack dealer misplaced a card when changing decks and the claimant took over an hour to resolve the matter, which also resulted in a loss of \$165.00 and a loss of

three shoes of cards. The employer's internal controls require 312 cards of the same color be dealt to the players on a six deck shoe. The dealer had just finished using gold cards but mistakenly left one gold card in the shoe when he inserted the 312 new black cards. The gold card left behind was pushed out as the burn card, which meant it was not discovered and there was no black card burned.

The gold cards were shuffling in the machine when a red light occurred messaging "missing a card." The claimant removed the cards from the machine and placed them back in the machine to be recounted and reshuffled. He should have counted the cards at that point but even after that, he recounted and reshuffled the cards by machine a second time. The shoe was then completed and the claimant instructed the dealer to hand shuffle the black cards without inspecting the cards himself or directing the dealer to inspect the black cards on the table to ensure they were correct before moving forward. The claimant removed the gold cards himself and counted them by hand. He then removed the shuffle machine from the table, took it to Pit 3 and brought a different shuffler to the table from Pit 3.

Table games supervisors are required to call surveillance when changing from machine shuffle to hand shuffle and when swapping out an automatic shuffler. The claimant failed to call surveillance prior to the dealer going from the machine shuffle to hand shuffle, prior to himself going from the machine shuffle to hand shuffle and prior to swapping out the broken shuffler.

Another shoe was completed and the black cards containing the one gold card were placed back in action. The claimant placed the gold cards in the new shuffler and the red light began blinking again to indicate a card was missing. He took the cards out and hand counted them again but had to eventually call the casino manager, who advised him to inspect the cards at play while the manager waited on the phone. The gold card was finally found but a total of three full shoes had been dealt to the players throughout the event. The first shoe was out of compliance as the first card was not burned. The second and third shoes were out of compliance because they contained an additional card of the wrong color. An investigation was conducted and the employer paid three players a total of \$165.00 for their losses during the three shoes.

The claimant filed a claim for unemployment insurance benefits effective March 11, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 15, 2012 per the employer's progressive disciplinary policy. He was on a final warning and a subsequent reminder to the final warning when he failed to follow the employer's policies and state laws. The claimant knew the policies but for whatever reason, chose to disregard those policies. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's repeated failure to follow policies shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 6, 2012, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs