

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN T ROWE**  
Claimant

**APPEAL NO. 07A-UI-04210-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEYS BRANCH MANAGEMENT CO INC  
HARVEYS CASINO RESORTS**  
Employer

**OC: 04/01/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated April 18, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2007. Although duly notified, the claimant was not at the telephone number provided. The employer participated by Carrie Buckley.

**ISSUES:**

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 18, 2005 until March 21, 2007, when he was discharged from employment. Mr. Rowe held the position of slot attendant. He was employed on a full-time basis and paid by the hour.

The claimant was discharged after a number of employees complained about the language that he had used during a pre-shift meeting on or about March 16, 2007. At that time the claimant used vile and inappropriate language when referring to the shift's current manager. Mr. Rowe had been warned a number of times by the company both verbally and in writing regarding his language and the use of inappropriate statements. Based upon the number of warnings that had been served upon the claimant and the facts concerning the most recent incident, a decision was made to terminate Mr. Rowe from his employment. At the time of discharge, he had no explanation.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The evidence establishes that Mr. Rowe had been repeatedly warned both verbally and in writing by the employer regarding his use of inappropriate language and inappropriateness of comments that he had made to other workers while employed by the company. Although the claimant had been repeatedly warned, he nevertheless continued to engage in inappropriate conduct by using vile and inappropriate language in the presence of other employees while referring to a company shift manager. The evidence establishes that the other employees considered the claimant's conducts to be inappropriate and uncalled for and complained to management about Mr. Rowe's conduct. Based upon his previous warnings and the most recent incident he was discharged.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,002.00.

**DECISION:**

The decision of the representative dated April 18, 2007, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount \$1,002.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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