

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL J VEZEAU
Claimant

APPEAL NO: 14A-UI-08484-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS CASINO RESORTS
Employer

OC: 07/20/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 7, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at the September 4 hearing. Craig Cress, a representative with Equifax; Annette Grote; and Aaron King, the casino operation's manager; appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working full time for the employer as a table games dealer in March 2012. During the claimant's employment, the claimant received six written warnings prior to July 17, 2014. The employer gave the claimant warnings for different policy violations. The claimant received his final written warning in late December 2013. The warning informed the claimant that if he had any further violations, he could be discharged.

In early July 2014 the employer gave the claimant a coaching for another policy violation. On July 16, 2014 the claimant inadvertently left four cards in the shuffler and dealt cards to players at his table. A supervisor noticed the shuffler had some cards left in it and stopped the game. The claimant had not left cards in an automatic shuffler before. When the game had to be stopped, the employer paid a guest \$10 for money lost in the game.

On July 17 the employer discharged the claimant because he again violated the employer's policy. The claimant established a claim for benefits during the week of July 20, 2014. The claimant filed claims for the weeks ending July 26 through August 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

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 Section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for business reasons. The claimant received warnings for failing to follow different policies. His mistakes or policy violations were different. The facts do not establish that the claimant intentionally violated the employer's policy. The facts also do not establish that claimant was so negligent he committed work-connected misconduct. The claimant was negligent when he did not notice he left some cards in the shuffler. Even though the claimant was negligent, he did not commit work-connected misconduct. As of July 20, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's August 7, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons but the claimant did not commit work-connected misconduct. As of July 20, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can