

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY L LOCKARD
Claimant

APPEAL NO. 12A-UI-00754-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

**OC: 12/18/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 13, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a hearing was held in Council Bluffs, Iowa on March 6, 2012. Claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Wendy Lockard was employed by Harveys Casino Resorts from July 25, 1995 until December 17, 2011 when she was discharged from employment. Ms. Lockard worked as a full-time environmental service worker and was paid by the hour. Her immediate supervisor was Jeff Wilkerson.

The claimant was discharged based upon the employer's belief that Ms. Lockard had intentionally failed to properly clean a women's bathroom on December 17, 2011 and had checked off that the bathroom had been properly cleaned. On the day in question Ms. Lockard was required to clean up to seven bathrooms at the facility and attempted to the best of her ability to clean each bathroom and check off the duties that she had accomplished.

Ms. Lockard categorically denies leaving a bathroom unclean and falsifying the record about performing her cleaning duties. It is the claimant's position that due to the number of patrons, bathrooms sometimes become dirty very soon after being serviced by environmental workers. The claimant denies the employer's allegation that she had failed to clean a bathroom but had certified that it had been cleaned.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). When based upon carelessness the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant appeared personally and testified under oath denying intentionally performing below her capabilities or falsifying records regarding the cleanliness of bathrooms. The claimant testified that she performed her duties to the best of her ability and that each bathroom that was marked off as cleaned had been cleaned and left in that condition by the claimant. The claimant further testified that because of the rush of business, bathrooms sometimes soon became dirty again due to excessive patronage usage.

While the employer may have felt justified in discharging the claimant based upon a management viewpoint, the evidence in the record does not establish disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated January 13, 2012, reference 01, is reversed. The claimant as discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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