

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIERSTEN HAUBRICH
Claimant

APPEAL NO. 10A-UI-04152-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

**Original Claim: 02-07-10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 3, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2010. The claimant participated in the hearing. Thleen Blood, Human Resources Manager, and Rory DeSantiago, Racing Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an on-call lead out for Harveys Casino Resorts from December 8, 2008 to February 9, 2010. Thleen Blood, Human Resources Manager, received reports from co-workers that the claimant was making inappropriate remarks. They stated she was calling one employee “monkey boy” and saying “give him a banana.” They indicated she also called another employee a “pillow biter,” inferring he was gay, called another employee a “fucking queer” and others “stupid bitch, blond bimbo,” and a “fat c**t.” Ms. Blood gathered witness statements from co-workers and then met with the claimant February 9, 2010. She asked the claimant if she was ever involved in the name-calling or said any of the things she was accused of and the claimant admitted calling an employee “monkey boy” and saying “get him a banana,” agreed she used the term “pillow biter” outside of work, but denied making any of the other statements reported by her co-workers. Ms. Blood asked the claimant if she felt she was engaging in professional conduct and the claimant agreed she was not and Ms. Blood asked why she was involved then and the claimant said the environment was filled with high school students, even though she is a college student, and “everyone acted like that.” The employer’s policy contains a Code of Conduct signed by employees stating they will not participate in any harassment. The claimant testified she thought about reporting the language and name-calling but did not do so and “went along with it.”

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant admitted calling a co-worker "monkey boy" and saying "give him a banana" as well as using the term "pillow biter" but only using that phrase outside of work, she denied calling co-workers the other names listed by the employees that reported her name calling. The witness statements were credible and even if the claimant only used the term "monkey boy" and said "give him a banana," which is unlikely, she violated the employer's Code of Conduct. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 3, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw