

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON M STEVENS
Claimant

APPEAL NO. 13A-UI-13412-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 11/03/13
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 27, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. Telephone hearings were held on December 30, 2013, and January 3, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Kuiper participated in the hearing on behalf of the employer with witnesses, Vicki Broussard and Brent Pritchett. Exhibits One through Six were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits and is he required to repay the overpayment?

Is the employer chargeable for benefits paid to the claimant?

FINDINGS OF FACT:

The claimant worked full time for the employer as a dealer/table games supervisor from August 21, 2012, to November 2, 2013. His supervisor was the director of casino operations, Brent Pritchett. He was informed and understood that under the employer's work rules, (1) employees were required to perform their jobs carefully and attentively, (2) cellphones were not to be visible, audible, or used during work hours, except on designated breaks in designated break areas, and (3) supervisor were to display their hands to surveillance cameras before leaving the table area or returning to the table area.

On February 14, the claimant had been coached about not following new opening game procedures that had been sent out around the beginning of the month. On April 20, the claimant had received a written warning for not being friendly enough during an encounter with a person sent in to evaluate customer service provided by employees. On August 19, the claimant

received a final written warning for using profanity in the casino operations office. The remark was not directed to anyone and was not made in area where guests could have heard it.

On October 27, the claimant's job was to work as a table games supervisor for the craps table. He was to sit in the box and watch the dealers and the players. At one point, the claimant turned his back to the table and looked at an overhead television for about 20 seconds. A short time later, he walked away from the table, pulled out his cellphone, swiped or typed something on phone, and looked at the phone before putting it back in his pocket. This was done in the pit area where a guest could see him. He did not display his hands to the camera when he returned to the crap game.

The claimant's actions were viewed on surveillance video and reported to his supervisor. Because of his actions and his prior discipline, the employer discharged the claimant on November 2, 2013.

The claimant filed for and received a total of \$3,512.00 in unemployment insurance benefits for the weeks between November 3 and December 28, 2013.

The claimant's supervisor, Brent Prichett, and the human resources representative, Vicki Broussard, participated and provided verbal information about the separation from employment at the fact-finding interview on November 26, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Brent Prichett's testimony that the video surveillance shows the claimant was watching television with his back to the table, that he used his cellphone in view of guests, and he did not clear his hands when he returned to the table. These were all violation of the employer's work rules. In light of the fact that the claimant was on a final warning, work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if

a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$3,512.00 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits.

DECISION:

The unemployment insurance decision dated November 27, 2013, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$3,512.00 in benefits. He is required to repay the overpayment and the employer's account will not be charged for benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css