

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WALTER L BUCKLEY
2452 S 20TH ST
OMAHA NE 68108-1356

HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO
1 HARVEYS BLVD
COUNCIL BLUFFS IA 51501

Appeal Number: 06A-UI-04493-DWT
OC: 04/02/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Harrah's Council Bluffs Casino (employer) appealed a representative's April 20, 2006 decision (reference 01) that concluded Walter L. Buckley (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2006. The claimant participated in the hearing. Don Tayler, Carrie Buckley and Gary Gorge appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on June 14, 2004. The claimant worked as a full-time security officer on the graveyard shift. The employer does not allow anyone under the age of 21 to enter the casino. To ensure customers are 21 years or older, the employer has an electronic card reader and employees are to place a driver's license in a holder so a picture can be taken of the license. The claimant understood an employee would be discharged if the employee allowed a customer younger than 21 to enter the casino.

On busy nights, Friday and Saturday, the claimant did not usually use the electronic card reader because it took too long for people to get into the casino. The claimant had no understanding that there was a problem if he did not use the electronic card reader. Prior to March 11, 2006, the claimant had never been warned that his job was in jeopardy.

On March 11 around 1:00 a.m. the casino was very busy and there were many people going into the casino. The claimant looked at a driver's license from Kansas and placed it in a holder so a picture could be taken. The claimant did not use the electronic card reader. The claimant allowed the male to enter the casino even though he was only 18. When the claimant allowed the male to enter the casino, he did not realize the male was not 21. Other security guards discovered the male after he was in the casino.

On March 13, 2006, the employer suspended the claimant for allowing a minor to enter the casino. The employer discharged the claimant on March 14, 2006. The employer discharged the claimant because the employer believed the male possessed an Iowa license which clearly stated he was not 21. The claimant did not remember whether the driver's license was vertical or horizontal.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant because he allowed a minor to enter the casino. The facts do not, however, establish that the claimant intentionally disregarded the employer's interests. The claimant made a mistake when he allowed the 18 year-old male into the casino. The claimant did not usually use the electronic card reader when it was very busy because it took too long to use. The claimant did get a picture of the male's driver's license, which indicated he was not 21. The claimant made a mistake when there were many people trying to get into the casino. This one isolated incident does not constitute work-connected misconduct for unemployment insurance purposes. The claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The representative's April 20, 2006 decision (reference 01) is affirmed. The employer established compelling business reasons for discharging the claimant. These reasons do not constitute work-connected misconduct for unemployment insurance purposes. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf