

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANICE L TUTTLE**  
Claimant

**APPEAL NO. 09A-UI-08617-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEYS BR MANAGEMENT CO INC**  
Employer

**Original Claim: 05/03/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated June 10, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 1, 2009. The claimant participated. The employer participated by Tonya Achenbach, senior employee relations specialist, and Michael Collings, shift supervisor security. The record consists of the testimony of Tonya Achenbach, the testimony of Michael Collings, the testimony of Janice Tuttle, and Employer's Exhibits 1 through 11.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked in the security department at the Horseshoe Casino. One of the main responsibilities of security at the casino was customer service. The claimant was the first employee to greet customers, and members of the security staff were to be upbeat and positive at all times. The claimant also had a role in securing company assets, such a handling the poker drop, and making certain that minors did not enter the casino.

The claimant did not perform her job in a satisfactory manner despite numerous verbal coaching sessions. In particular, the employer was critical of her customer service. The incident that led to her termination of April 15, 2009, occurred on April 13, 2009. The claimant had put a cough drop in her mouth and this was considered eating on post. In addition, the employer did not feel that she properly acknowledged guests as they entered or exited the casino. The claimant had a final written warning for not meeting expectations on customer service on January 20, 2009. She was given a reminder for not following correct escort procedures during the poker drop on February 7, 2009, as well other shortcomings in customer service.

## REASONING AND CONCLUSIONS OF LAW:

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.

The misconduct that warrants termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. In general, misconduct is found in deliberate acts or omissions, which constitute a material breach of the workers' duty to the employer or in repeated acts of carelessness or negligence. Poor performance due to inability is not considered misconduct. It is the employer who has the burden of proof on misconduct.

The evidence established that the claimant did not perform her job to her employer's expectations. The claimant, despite coaching, did not consistently greet customers properly nor did she present the upbeat and positive attitude the employer wanted displayed by members of the security staff. After considering all of the evidence in this case, the administrative law judge concludes that the claimant's job performance was more akin to unsatisfactory conduct or failure in good performance as a result of inability or incapacity as opposed to a deliberate disregard of the employer's interests. Benefits will be allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 10, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw