

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE A HYNES
Claimant

APPEAL NO. 07A-UI-03544-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEY'S CASINO RESORTS
Employer

**OC: 02/25/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marie Hynes filed an appeal from a representative's decision dated March 27, 2007, reference 01, which denied benefits based on her separation from Harvey's Casino Resorts. After due notice was issued, a hearing was held by telephone on April 23, 2007. Ms. Hynes participated personally. The employer participated by Carrie Buckley, Senior Employee Relations Representative.

ISSUE:

At issue in this matter is whether Ms. Hynes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hynes was employed by Harvey's from June 28, 2000 until February 21, 2007 as a full-time bartender. She was discharged for misappropriation of company funds and not following procedures.

During a random surveillance of her area, Ms. Hynes was observed selling two hot dogs, which cost \$1.00 each. The customer gave her \$2.00. She put one of the bills in the register and the other bill in the tip jar. She had not been told she could give away food. She was also observed pouring double shots. When questioned, she indicated she did not believe the bottles were pouring correctly. She did not use the jigger provided at the bar. Ms. Hynes also failed to ring up all sodas. The sodas are free but must be rung up. The employer estimated that there were approximately 15 sodas that were not rung up.

As a result of the video surveillance, Ms. Hynes was discharged. Her only prior discipline was for cash register variances.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Hynes was discharged for misappropriation of funds and the failure to follow procedures. She placed money in the tip jar rather than in the register. The \$2.00 given by the customer was intended as payment for the hot dogs. By placing one of the bills in the tip jar, Ms. Hynes was guilty of theft of \$1.00.

Ms. Hynes was also pouring more alcohol in drinks than allowed. If she felt the bottles were not pouring correctly, her recourse was to use a jigger to measure the alcohol, not pour more alcohol. As the bartender, it was her responsibility to make sure she had the necessary equipment, such as jiggers, on hand to perform her job. Her conduct cost the employer money as over-pouring meant not as many drinks could be made from the bottle of alcohol.

The administrative law judge concludes that the conduct referred to above constituted a substantial disregard of the employer's standards. An employee should know that theft of money from the employer is contrary to the employer's standards. The fact that only \$1.00 was stolen on this occasion is immaterial. Pouring more alcohol than allowed could result in financial loss to the employer. For the reasons stated herein, it is concluded that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated March 27, 2007, reference 01, is hereby affirmed. Ms. Hynes was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css