

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

SHARON K RIVERA
1020 N 31ST
COUNCIL BLUFFS IA 51501

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

Appeal Number: 04A-UI-09945-DWT
OC: 08/22/04 R: 01
Claimant: Appellant (2)

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 are 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:

Sharon K. Rivera (claimant) appealed a representative's September 10, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, or the account of Harvey's Iowa Management Company, Inc., doing business as Harrahs Council Bluffs Casino (employer), would not be charged because the employer discharged the claimant for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2004. The claimant participated in the hearing. Carol Beno, the cashier manager, and Tonya Achenbach 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 December 18, 1995. The claimant worked as a full-time cashier. Prior to January 2004, the employer had not given the claimant any warnings for failing to lock her cash drawer at the end of her shift. The claimant knew the employer had a progressive disciplinary policy. The claimant understood an employee could be discharged if the employee had continuing problems after receiving a final written warning.

The employer gave the claimant a written warning February 24, 2004, for failing to secure her cash drawer when she left work on February 23, 2004. On April 20, 2004, the claimant received a final written warning for again failing to lock her cash drawer before she left the premises on April 12, 2004. The April 20, 2004 final warning informed the claimant she could be discharged if she again failed to lock her drawer when she left work.

The claimant did not believe she had left her cash box unsecured and asked the employer for a picture from the employer's surveillance cameras to prove the claimant left work without locking her cash drawer. The employer did not accommodate this request.

At the end of a shift, a co-worker counts the claimant's cash drawer. The claimant then either locks the drawer or another employee takes over the drawer. After receiving the April 20 final warning, the claimant asked the co-worker who counted her drawer at the end of her shift to make sure the claimant locked or secured the drawer before she left.

On August 20, 2004, the claimant left work at the end of her shift at 2:00 p.m. Even though another employee counted the claimant's drawer at the end of this shift, the employer discovered the claimant's cash drawer had not been locked after the claimant left work. On August 23, 2004, the employer discharged the claimant for failing to lock her cash drawer at three times in less than a year.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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. In accordance with the employer's progressive disciplinary policy, the employer discharged the claimant after she failed for the third time on August 20, 2004, to secure her drawer when she left work.

Even though the employer had compelling business reasons for mandating employees to lock cash drawers when an employee went on a break or left work, the claimant established she did her best to make sure she properly locked or secured her cash drawer. The claimant understood her job was in jeopardy on April 20 after she received her final written warning. She took reasonable steps in an attempt to make sure she locked her drawer at the end of her shift. The claimant's failure to lock her cash drawer on February 23, April 12 and August 20 does not establish that the claimant was so negligent or careless she committed work-connected misconduct. Instead, the claimant worked to the best of her ability and did not intentionally fail to leave her cash drawer unlocked at the end of her shift. The claimant did not commit work-connected misconduct. As of August 22, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 10, 2004 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons, but the claimant did not commit work-connected misconduct. As of August 22, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf