

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M BENKIS

Claimant

APPEAL NO. 07A-UI-01673-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEY CASINO RESORTS

Employer

**OC: 05-07-06 R: 01
Claimant: Respondent (2)**

Iowa Code section 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 7, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 4, 2007. The claimant did participate. The employer did participate through Tonya Achenbach, Senior Employee Relations Representative.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier full time beginning June 13, 2006 through October 10, 2006 when she was discharged.

The claimant was discharged because her gaming license was no longer valid. Under state law in order to work in a Casino such as the employer, the employee has to have a valid gaming license from the state of Iowa. On September 13, 2006 the claimant and the employer were notified that the claimant's gaming license was being suspended. The claimant knew that in order to work in a casino she must possess a valid gaming license. The employer put the claimant on personal leave and gave her four weeks, or until October 10, 2006, to get her gaming license in good standing. The claimant did not get her license in good standing and at the hearing indicated that she is not able to obtain a gaming license due to issues relating to U.S. Bank.

The claimant has received unemployment benefits since filing a claim with an effective date of May 7, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant knew she was required under state law to have a valid gaming license in order to be employed by a casino. This situation is much like that of an employee who must have and maintain a valid driver's license in order to perform their job duties. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. Cook v. IDJS, 299 N.W.2d 698 (Iowa 1980). The claimant's failure to maintain a valid gaming license is sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 7, 2007, reference 03, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,848.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs