

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENA C POTVIN**  
Claimant

**APPEAL NO. 14A-UI-12505-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEY'S BR MANAGEMENT CO INC**  
Employer

**OC: 11/02/14**  
**Claimant: Respondent (1/R)**

Section 96.5(2)a – Discharge/Dismissal

**STATEMENT OF THE CASE:**

Harvey's Branch Management Company, Inc. D/B/A Harvey's Casino Resorts filed a timely appeal from a representative's decision dated November 24, 2014 (reference 02) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work due to a staff reduction. After due notice was provided, a telephone hearing was held on December 29, 2014. Claimant participated. Participating on behalf of the claimant was Mr. Kris Madson, Attorney at Law. The employer participated by Mr. Tom Kuiper, Hearing Representative, and witness Ms. Vicky Broussard, HR Consultant.

**ISSUE:**

At issue is whether the claimant's separation from Harvey's Branch Management Company, Inc. (employer account number 297834-000) was for job-related misconduct.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Dena Potvin began employment with Harvey's Branch Management Company, Inc. D/B/A Harvey's Casino Resorts on January 1, 1996. Ms. Potvin was most recently employed as a full-time table games supervisor and was paid by salary.

On or about November 2, 2014 the claimant's employment with the captioned employer (account number 297834-000) came to an end when the employer initiated a "transfer" of Ms. Potvin's employment to Harrah's Casino in Council Bluffs, Iowa. Although it appears that there is some common ownership of the casinos, each casino maintains its own and distinct employer account identification tax number and is considered for the purpose of unemployment insurance law as separate and distinct employers.

The decision to separate Ms. Potvin from her employment with Harvey's Branch Management Company, Inc./Harvey's Casino Resorts (employer account number 297834-000) was initiated by that employer for business reasons and there is no allegation of misconduct on the part of the Ms. Potvin as the basis for the employer's decision to separate the claimant from her employment with Harvey's Casino Resorts to a different employer.

After leaving her employment with Harvey's Branch Management Company, Inc., because of the separation from employment initiated by the "transfer," Ms. Potvin began her employment with Harrah's Casino. It appears the claimant was subsequently separated by that employer in December 2014 due to a reduction in the workforce at that time.

It is the position of Harvey's Branch Management Company, Inc. that because the claimant was separated due to a "reduction in the workforce" while employed by Harrah's Casino, that the claimant's job separation initiated by Harvey's Branch Management Company, Inc. in the form of a "transfer" could not be considered as a job separation and could not subject Harvey's Branch Management Company, Inc. to potential charges for unemployment insurance benefits that are paid to the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue before the administrative law judge in this matter is whether the claimant's job separation from Harvey's Branch Management Company, Inc. (employer account number 297834-000) subjects that employer to potential charging as a job separation or whether the claimant's true separation from employment took place at a later date from a different casino owned by the company and is chargeable to that employment.

The administrative law judge concludes that the claimant's job separation categorized by Harvey's Branch Management Company, Inc. as a "transfer" was a separation from employment initiated by the employer and subjects Harvey's Branch Management Company, Inc. to potential charging for unemployment insurance benefits paid to the claimant.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

In this matter, the evidence in the record establishes that Ms. Potvin had been a long-time employee of Harvey's Branch Management Company, Inc.; working most recently as a full-time table games supervisor for the company and for apparent business-related reasons Harvey's Branch Management Company, Inc. ended the employment relationship between Ms. Potvin and the company by utilizing the method of "transferring" her out of her employment with Harvey's Branch Management Company, Inc. to employment with a different casino with a separate distinct name, location, and employer tax identification number. Because there is no allegation of misconduct on the part of Ms. Potvin; the administrative law judge concludes that the separation initiated by Harvey's Branch Management Company, Inc. was at and for the convenience of the employer for business reasons and does not disqualify the claimant from receiving unemployment insurance benefits, based upon provisions in the Iowa Security Law.

The administrative law judge concludes that the claimant's termination from her employment was neither a quit nor a discharge for misconduct in connection with the claimant's work but was classifiable as other separation and/or layoff; which does not subject the claimant to disqualification from unemployment insurance benefits but subjects the employer to potential charging for unemployment insurance benefits related to that job separation. The administrative law judge concludes that the representative's decision dated November 24, 2014 (reference 02) is correct in its finding that the claimant's separation from work took place under non-disqualifying conditions and finds the employer's account subject to potential charging for benefits paid.

Based upon additional information available at the time of hearing, the administrative law judge also concludes that an additional separation from employment later occurred while Ms. Potvin was in the employ of Harrah's Casino. The issue of the claimant's later separation from employment from Harrah's Casino is remanded to the Claims Division for investigation and determination as to whether the subsequent separation from employment took place under disqualifying conditions.

**DECISION:**

The representative's decision dated November 24, 2014 (reference 02) is affirmed. The claimant's separation from employment on or about November 2, 2014 took place under non-disqualifying conditions. The claimant is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law. Harvey's Branch Management Company, Inc. account shall be charged for benefits paid to the claimant, based upon that job separation. The issue of whether the claimant was subsequently separated from employment from Harrah's Casino is remanded to the Claims Division, Iowa Workforce Development for investigation and determination as to whether that separation was a disqualifying event and/or whether that employer should be charged.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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