

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

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RACING ASSOCIATION OF
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Appeal Number: 04A-UI-08122-ET
OC: 07-04-04 R: 02
Claimant: Respondent (1)

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 is 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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 27, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 18, 2004. The claimant participated in the hearing. Dan Byers, Assistant Director of Human Resources, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time casino floor attendant for Prairie Meadows from November 25, 2002 to July 9, 2004. On June 27, 2004, a security officer saw the claimant lying on a bench in the locker room with his shoes off around 6:00 a.m. On June 28, 2004, a different security officer found the claimant sleeping in the locker room with his shoes off around 6:00 a.m. The officer rattled his keys but the claimant did not wake up until the guard opened the locker room door at which time he woke up and then laid back down on the bench. The claimant was suspended July 3, 2004, pending a review of the situation, and the employer terminated his employment July 9, 2004. The claimant had been released to return to work without restriction in early June 2004 following a work-related foot problem and was still experiencing foot pain after walking three or four hours at work. He was taking pain medication and had asked his supervisor if he could take his shoes off in the break room during his break or lunch period but was told he could only take his shoes off in the locker room. The claimant's feet were bothering him June 27 and 28, 2004, and he went to the locker room so he could take his shoes off and elevate his feet. He testified he lay down on a bench with his arm over his eyes because he was looking up into bright ceiling lights but does not believe he fell asleep on either occasion and only laid down during his break or lunch period and was not late returning to work. The claimant had not received any previous warnings and although the employer uses a progressive disciplinary policy, sleeping on the job is considered an offense requiring immediate termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying job misconduct. 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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While it appears the claimant was sleeping during his break and/or lunch periods June 27 and 28, 2004, he was seeking a place to sit or lay down so he could take his shoes off and elevate his feet because of a recent foot problem. The employer was aware of the problem and the claimant did ask his supervisor if he could take his shoes off in the break room to relieve his foot pain but was told he could only do so in the locker room. The claimant was also taking pain medication, which could have contributed to drowsiness. The employer did not issue any warnings to the claimant and the evidence does not establish that the claimant failed to return from his breaks or lunch on time. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The July 27, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf