

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIRK J HEDLUND
Claimant

APPEAL NO. 11A-UI-00582-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

**OC: 12/19/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino (employer) appealed a representative's January 12, 2011 decision (reference 01) that concluded Dirk Hedlund (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 16, 2011. The claimant participated personally. The employer participated by Pamela Anderson, Human Resource Recruiter.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 3, 2008, as a full-time network administrator. The claimant signed for receipt of the employer's handbook on March 3, 2008, and October 5, 2010.

In July 2010, the employer asked the claimant if the computer was configured in a particular way. The claimant answered the question. The employer asked the claimant if he had changed the configuration. The claimant answered that he had not. Later the employer asked the claimant again if he had changed the computer configuration. The claimant said that he had not and asked if he was supposed to change it. The employer said it would get back to him after a meeting. After the meeting the employer asked the claimant a third time if he had changed the computer's configuration. The claimant asked again if he was supposed to change it. The employer told him to change it and the claimant complied within ten minutes. On July 23, 2010, the employer issued the claimant a verbal warning for failure to follow instructions.

The claimant was the person assigned to do all e-mail searches. He performed searches if the employer told him to do so in writing or verbally. On December 17, 2010, the claimant was told to search his own e-mails for anti-virus information. The claimant searched without opening the

e-mails. On December 21, 2010, the employer terminated the claimant for searching too many e-mails.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 12, 2011 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css