

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK JOHNSON JR
Claimant

APPEAL NO. 09A-UI-11298-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

**Original Claim: 07/12/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patrick Johnson filed an appeal from a representative's decision dated August 6, 2009, reference 01, which denied benefits based on his separation from Prairie Meadows Racetrack & Casino. After due notice was issued, a hearing was held by telephone on August 24, 2009. Mr. Johnson participated personally. The employer participated by Pam Anderson, Human Resources Recruiter. The hearing record was left open to allow the employer an opportunity to provide additional evidence. However, the additional evidence was not provided.

ISSUE:

At issue in this matter is whether Mr. Johnson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Johnson was employed by Prairie Meadows from April 30, 2007 until July 13, 2009. He worked full time in housekeeping. He was discharged as a result of his conduct at the workplace on July 3, 2009.

Mr. Johnson was at the racetrack with his girlfriend on July 3 during his off-duty time. He was not dressed in or wearing anything that identified him as an employee. According to the employer, the girlfriend gave what can best be described as somewhat of a "lap dance" while the two were in the concession area. According to the employer, the incident lasted approximately 20 minutes and was captured on surveillance video. Management spoke to Mr. Johnson on July 4 and suspended him on July 9 pending an investigation and further determination. He was discharged on July 13, 2009. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Johnson was discharged as a result of off-duty conduct. The administrative law judge must determine if the off-duty conduct was in connection with his employment as is required for a misconduct disqualification. He was not wearing a uniform or anything that associated him with Prairie Meadows. Therefore, the general public would have had no way of knowing that he was an employee. For the above reasons, the administrative law judge concludes that the conduct was not in connection with the employment.

Even if the administrative law judge were to conclude that the conduct was in connection with the employment, the employer would still have failed to satisfy its burden of proving disqualifying misconduct. The administrative law judge presumes that guests who engage in inappropriate conduct in public areas would be asked to refrain from such activity or leave the premises. A gambling facility such as Prairie Meadows is, no doubt, under constant surveillance. If the conduct Mr. Johnson and his date were engaging in was so clearly inappropriate, one would have to wonder why it was allowed to last for 20 minutes without security or other personnel approaching them. According to the employer, the behavior stopped without anyone interceding on behalf of Prairie Meadows.

Based on the evidence presented, the administrative law judge concludes that, at most, the employer's evidence establishes only an isolated instance of poor judgment. Conduct so characterized is not considered disqualifying misconduct. 871 IAC 24.32(1). While the employer may have had good cause to discharge Mr. Johnson, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated August 6, 2009, reference 01, is hereby reversed. Mr. Johnson was discharged by Prairie Meadows, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw