

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KETHSANA NACHIENGANE**  
Claimant

**APPEAL NO. 11A-UI-01993-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO**  
Employer

**OC: 11/07/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 16, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Pam Anderson, a human resource recruiter, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2004. He was working as a full-time table games supervisor when his employment ended.

During his employment, the claimant has received several verbal and written warnings for unsatisfactory job performance. Since 2009, the claimant received five verbal or written warnings. With the last two warnings, the claimant was also suspended—three and five days. The claimant received warnings for not maintaining a positive attitude, failure to contact management when there was a jackpot, failure to make sure table games inventory slips were correct, and failure to inform management about the status of a table loss. The claimant understood his job was in jeopardy after he received the suspensions.

On October 17, 2010, the employer was short-staffed and the claimant multi-tasked to get all the work completed. On October 17, when he was closing on a roulette table, neither he nor another employee noticed some chips on the table. The claimant signed off or submitted the paperwork to close the table with a \$10,000 error. Later during his shift, the claimant discovered his error, saw the chips and reported his discovery to his supervisor.

On November 1, 2010, the employer discharged the claimant because he continued to make errors. The employer decided the claimant's unsatisfactory work performance could no longer be tolerated and discharged him.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant understood his job was in jeopardy after he received two suspensions. On October 17, 2010, the claimant was closing a roulette table while patrons were playing. As a result of being short-staffed and multi-tasking, neither the claimant nor another employee initially saw \$10,000 worth of chips on the table. Later, the claimant discovered the chips and realized he made a mistake when he closed the table. The claimant reported his error to his supervisor.

The employer followed its progressive disciplinary procedure and established justifiable business reasons for discharging the claimant. The claimant's actions on October 17, 2010, do not establish work-connected misconduct. The claimant made a mistake, but he was not careless or negligent to the extent that he committed work-connected misconduct. As of November 7, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's February 16, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit a current act of work-connected misconduct. As of November 7, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw