

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONNIE APODACA**  
Claimant

**APPEAL NO. 110-UI-00501-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 09/05/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Prairie Meadows Racetrack & Casino (employer) appealed a representative's September 30, 2010 decision (reference 01) that concluded Ronnie Apodaca (claimant) was discharged and there was no evidence of willful or deliberate misconduct. An administrative law judge decision was issued on November 5, 2010, reversing the representative's decision. A decision of remand was issued by the Employment Appeal Board on January 11, 2011. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 15, 2011. The claimant was represented by Katie Naset, Attorney at Law, and 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 November 2, 1998, and at the end of his employment he was working as a full-time food and beverage supervisor. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a 90-day probation in January 2010. On May 4, 2010, the employer issued the claimant a written warning for poor job performance. On July 16, 2010, the employer issued the claimant a written warning and suspension for poor job performance. The employer notified the claimant that further infractions could result in termination from employment.

On August 26, 2010, the employer talked to the claimant about failure to properly check the cash register tape against a hand written complimentary receipt. The claimant looked at a lot of receipts and understood that he was making few mistakes in comparison to the number of receipts he was checking. The employer did not offer the claimant any training to help him learn how to perform better. On August 30, 2010, the employer told the claimant he made another

error in comparison of the tape and receipt. The employer terminated the claimant on September 9, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

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 connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's September 30, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs