

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID G KNOX**  
Claimant

**APPEAL NO. 12A-UI-14072-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 20, 2012, reference 01, which held claimant ineligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on January 3, 2013. Claimant participated. The employer's witness was not available at the telephone number provided. Messages were left.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: David Knox was employed by Prairie Meadows Racetrack & Casino from March 2010 until October 29, 2012 when he was discharged from employment. Mr. Knox was employed as a full-time table games dealer and was paid by the hour.

Mr. Knox was discharged on October 29, 2012 after he inadvertently failed to remember to punch out when leaving work approximately one week earlier. The claimant had made a concerted effort to insure that he punched in and out properly and had gone 49 weeks without an error in punching in or out. Because the claimant had previously been warned for failure to punch out and for another issue, the employer elected to discharge Mr. Knox from his employment based upon the final incident.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In this matter the claimant was discharged because he had previously been warned for failure to punch in or out almost one year previously. Since receiving his previous warning, the claimant made a concerted effort to insure that he punched in and out properly but inadvertently failed to do so approximately one week before his discharge.

While the decision to terminate Mr. Knox may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated November 20, 2012, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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