

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS A LEMAY
Claimant

APPEAL NO. 07A-UI-08444-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 08/12/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino, Inc. filed an appeal from a representative's decision dated September 4, 2007, reference 01, which held that no disqualification would be imposed regarding Dennis Lemay's separation from employment. After due notice was issued, a hearing was held by telephone on September 18, 2007. Mr. Lemay participated personally. The employer participated by Gina Vitiritto, Employee Relations Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lemay was employed by Prairie Meadows from September 7, 1999 until August 8, 2007. He was employed full time as a dishwasher. His discharge was prompted by his conduct of August 3, 2007. Mr. Lemay was being disciplined for what the employer felt was a failure to follow instructions in performing his duties. The meeting took place with his supervisor and two other members of management. The meeting was in a closed room and other employees were unable to overhear the exchange.

Mr. Lemay became upset during the meeting because he believed management was being unfair in signaling him out. He indicated it was “fucking bullshit” and that he was being picked on. Because of his belligerent attitude, he was sent home and advised not to return until he heard from human resources. Mr. Lemay had received a warning on January 15, 2007 for what the employer felt was disrespectful conduct. The particulars of the conduct are unknown. Mr. Lemay was notified of his discharge on August 8, 2007.

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. Lemay was discharged as a result of his conduct when meeting with management on August 3. Although he may have said the warning was “fucking bullshit,” he did not direct profanity towards any specific individual and did not engage in name-calling. The language was not used in the course of refusing to perform a certain task. It did not occur in the presence of other employees so as to undermine the supervisor’s authority within the workplace.

It is unreasonable to expect employees to be docile and well-mannered at all times. Mr. Lemay was letting off steam when he received a warning he felt was unfair. Given that the conduct occurred in a closed meeting and did not involve name-calling, the administrative law judge concludes that Mr. Lemay’s single “hot-headed” episode on August 3 is not sufficient to establish substantial misconduct. Although he had received a warning on January 15, 2007, the employer was unable to provide details as to the reason for the warning. Therefore, the administrative law judge cannot determine that it was work-related misconduct as that term is defined by law.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge, 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 1983).

DECISION:

The representative's decision dated September 4, 2007, reference 01, is hereby affirmed. Mr. Lemay was discharged by Prairie Meadows but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/