

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERROD K DRAISEY**  
Claimant

**APPEAL NO. 08A-UI-09133-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO**  
Employer

**OC: 09/07/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

Jerrod K. Draisey filed a timely appeal from an unemployment insurance decision dated September 30, 2008, reference 01, that disqualified him for benefits. Prior to a final hearing being scheduled, the claimant's attorney submitted written interrogatories to the employer. The employer responded on September 3, 2008, by indicating that it wished to withdraw its protest to Mr. Draisey's claim and that it did not wish to participate in an evidentiary hearing. The claimant and his attorney waived further notice and a telephone hearing was held on November 5, 2008, with Mr. Draisey testifying.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jerrod K. Draisey was employed by Prairie Meadows Racetrack & Casino from August 8, 2006, until he was discharged August 12, 2008. He last worked as a table games dealer.

He was discharged by letter from Michele Wilkie, the employee relations manager for Prairie Meadows. The final incident cited by the employer was Mr. Draisey's supposed failure to clock in for his 6:00 p.m. shift on July 19, 2008. Mr. Draisey had, in fact, clocked in at 5:53 p.m. for his shift that was to begin at 6:00 p.m. John Geiger and approximately 30 other employers were present at that time. Mr. Draisey was not contacted by the employer about the incident until the letter of discharge.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. 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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

As noted above, the employer has chosen not to participate in these proceedings. The claimant's testimony, the only evidence in the record, establishes that he clocked in appropriately on July 19, 2008, and that, in any event, the employer did not raise the issue with him until August 12. No disqualification may be imposed based upon this evidence.

**DECISION:**

The unemployment insurance decision dated September 30, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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