

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BETTY A BEEMER
1000 N 6TH ST
INDIANOLA IA 50125-1470**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC
PO BOX 1000
ALTOONA IA 50009-1000**

**Appeal Number: 06A-UI-02833-JTT
OC: 02/19/06 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino filed a timely appeal from the March 6, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 29, 2006. Claimant Betty Beemer participated. Employee Relations Manager Gina Vitiritto-Robinson represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Betty Beemer was employed by Prairie Meadows Racetrack & Casino as a full-time casino floor attendant from June 28, 1999 until February 10, 2006, when the employer suspended her pending an investigation and possible termination. The employer discharged Ms. Beemer on February 15, 2006.

The final incident that prompted the discharge occurred on February 10, 2006. Ms. Beemer responded to a slot machine that indicated the patron had won a jackpot. Two displays on the machine provided conflicting information about the exact amount of the jackpot, with one providing an even dollar amount, \$3,878.00, and another adding four cents to that amount. Ms. Beemer contacted the dispatch department for instructions regarding how she should treat the discrepancy and was told to use the even dollar amount as the payout amount. Slot Supervisor Livia Garber became involved and directed Ms. Beemer to write the jackpot amount as \$3,879.00. Ms. Beemer contacted the dispatch department to make certain that she had correctly heard their instructions and confirmed that she had. At the time Ms. Garber became involved, Ms. Beemer had already filled out the appropriate paperwork for the jackpot, a coworker had signed the paperwork, and the patron had signed the paperwork. Ms. Beemer questioned whether Ms. Garber was providing her with appropriate instructions. Ms. Garber became upset that Ms. Beemer was not simply following her directions and summoned another supervisor. Before the second supervisor arrived, Ms. Beemer had complied with Ms. Garber's instructions to rewrite the paperwork to round up to the next even dollar amount. However, when Ms. Beemer presented the paperwork to the cash cage for payment to the patron, the cash cage manager balked at the rounded up amount. The employer deemed Ms. Beemer's conduct during the exchange with Ms. Garber as insubordination and discharged Ms. Beemer based on this event and prior warnings for dissimilar conduct. Ms. Beemer had not previously been reprimanded for alleged insubordination.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Beemer was discharged for misconduct in connection with the employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

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

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, a discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The evidence in the record fails to establish insubordination on the part of Ms. Beemer. Ms. Beemer received conflicting instructions regarding how to handle a discrepancy in a jackpot amount. Ms. Beemer used her best judgment to determine the appropriate amount.

Ms. Beemer's supervisor insisted she do something different and Ms. Beemer complied. After Ms. Beemer followed the supervisor's instructions, the employer's cash cage manager balked at making the payout for the amount Ms. Beemer's supervisor had determined as the payout amount. In other words, the supervisor's directive conflicted with what the dispatch department, the cash cage manager, and Ms. Beemer all thought was the appropriate thing to do under the circumstances.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Beemer was discharged for no disqualifying reason. Accordingly, Ms. Beemer is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Beemer.

DECISION:

The Agency representative's decision dated March 6, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kkf