

**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**

**PETER L LORIKO
BLDG 230
926 OAKRIDGE DR
DES MOINES IA 50314-2100**

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

**Appeal Number: 06A-UI-03032-HT
OC: 02/19/06 R: 02
Claimant: Appellant (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

STATEMENT OF THE CASE:

The claimant, Peter Loriko, filed an appeal from a decision dated March 8, 2006, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 5, 2006. The claimant participated on his own behalf. The employer, Prairie Meadows, participated by Employee Relations Manager Gina Vitiritto-Robbinsen.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Peter Loriko was employed by Prairie Meadows

beginning March 29, 2004. He was a full-time housekeeper. He had been verbally warned by supervisors on December 2 and 11, 2005 and on January 14, 2006, about his failure to observe the dress code. Employees are not to wear shirts under the uniform shirt if it is visible about the collar of the uniform shirt.

On February 17, 2006, the claimant gave a two-week notice of resignation to Employee Relations Manager Gina Vitiritto-Robbinsen and signed a written notice drawn up by Supervisor Robin Gordon. The next day the claimant appeared at work wearing a turtleneck sweater under his uniform. His supervisor advised him this was another violation of the dress code and he was told to take it off. He refused and was given the choice of removing the turtleneck or going home. He chose to go home and the employer later notified him he did not need to return because Prairie Meadows had accepted his resignation effective immediately.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was discharged before the end of his notice period for insubordination. His defiance of the dress code had been discussed with him on at least three prior occasions but he declined to follow the code and the instructions of his supervisor. He was not discharged because he had resigned but for his defiance of company policy and supervisors' orders. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 8, 2006, reference 02, is affirmed. Peter Loriko is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/pjs