

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY D DITZENBERGER**  
Claimant

**APPEAL NO: 10A-UI-03404-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 01/31/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jeffrey D. Ditzenberger (claimant) appealed a representative's February 25, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Prairie Meadows Racetrack & Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2010. The claimant participated in the hearing. Tracey Casey appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 15, 2006. He worked full time as a table games dealer, primarily on a 4:00 p.m. to 12:00 a.m. schedule on Tuesday through Saturday evenings. His last day of work was February 2, 2010. The employer discharged him on February 4, 2010. The reason asserted for the discharge was failure to follow proper clock out procedures after prior warning.

The claimant had received some prior counselings for failing to clock out at the end of his shift, and on October 12, 2009 had received a one-day suspension for failing to clock out. On November 20, 2009 he had been given a final warning, but for an issue unrelated to clocking out, a matter regarding comments the claimant had made to a coworker while working at a game table.

In about September or October 2009 the employer installed a fingerprint verification process to be used in addition to the swiping of an identification badge to clock in or clock out. The employer asserted that on January 26, 2010 the claimant failed to properly clock out by doing the finger print verification step after swiping his identification badge. The claimant did not recall

whether he had simply forgotten to do the fingerprint verification scan after swiping his card, or whether he attempted to do the fingerprint scan and did not realize that it had not registered properly. The employer was unable to verify if the claimant had made an attempt to do the fingerprint scan or not. Because of this additional incident after receiving the final disciplinary warning for the unrelated issue, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the failure to properly clock out on January 26 by both swiping his badge and doing the fingerprint verification, after prior warnings but after a final warning for a different type of issue. The employer has not established that the claimant's failure to successfully clock out by both correctly swiping his badge and doing the fingerprint scan, which he may have made a good faith attempt to do, was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or a good faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 25, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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