

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY OWENS
Claimant

APPEAL NO. 12A-UI-05588-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK AND CASINO**
Employer

**OC: 08/28/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Zachary Owens, filed an appeal from a decision dated May 2, 2012, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 6, 2012. The claimant participated on his own behalf. The employer, Prairie Meadows, participated by Human Resource Generalist Pam Anderson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Zachary Owens was employed by Prairie Meadows from January 9 until April 5, 2012 as a full-time table games dealer. He was given three weeks' training on his job requirements and employer policies. Dealers are prohibited from dealing to any relative, anyone sharing living quarters with them, and dealing to close personal friends is "not recommended."

On April 1, 2012, a co-worker saw the claimant dealing to a woman she thought was his sister. She tapped him on the shoulder and reminded him he was not to be dealing to relatives. He said he was "doing nothing wrong" and went back to dealing. Later in the smoking area, Mr. Owens approached the co-worker and stated the woman to whom he was dealing was not his sister but a close family friend. The co-worker said she just had not wanted him to get fired for violating the policy. He said again he was doing nothing wrong and if he was fired he was going to "take legal actions."

These exchanges were reported by the co-worker to the manager, who then referred it to human resources. The investigation was conducted by watching the video surveillance of the claimant while he was dealing and while he was talking later to the co-worker. He was discharged for failing to successfully complete the probationary period.

Mr. Owens thought it was okay to deal to a close friend as long as that person was not living with the dealer, but that is not correct.

REASONING AND CONCLUSIONS OF LAW:

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 claimant acknowledged he had received the employer's policies and attended the orientation and training. But, in spite of this, did not know it was not recommended to be dealing to close friends. The co-worker was merely trying to remind him of the policy to prevent him from getting in trouble. The confrontation in the smoking area could have been interpreted by the co-worker as a threat against her for reporting the matter.

Both of these incidents show a disregard for the employer's policies and disrespect for co-workers. The fact Mr. Owens apparently misinterpreted the provisions about dealing to friends is not a proper excuse. If there was any doubt, he should have asked the friend to leave rather than being defiant and declaring he was "doing nothing wrong." It is better to err on the side of caution.

The claimant was discharged during his probationary period for conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of May 2, 2012, reference 03, is affirmed. Zachary Owens is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw