

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS S TENDROCK
Claimant

APPEAL NO. 08A-UI-03420-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 03/09/08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 2, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2008 in Des Moines, Iowa. Claimant participated. Employer participated through Michelle Wilkie, employee relations manager.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time table games dealer from June 19, 2006 through March 11, 2008 when he was discharged after having been suspended on March 7 pending investigation. On March 1, 2008 claimant was in the break area while upset about a reorganization of shifts based upon seniority. He referred to the dual rate supervisors (dealer who can also act as a supervisor as needed) as “fool rates” and said he could take chips off a specific dual rate supervisor’s tables without her noticing. Employer had warned him and placed him on a five-day suspension on August 31, 2007 for violating the mutual respect policy at a craps table after the supervisor told him to turn off his puck (on/off button). In the presence of guests he said, “I know what I’m doing.” The supervisor said, “What?” Claimant replied, “Look, I’ve dealt this game for seven years, how long have you done this?” On August 17, 2007 employer issued claimant a three-day suspension for failure to follow supervisory instructions on a live game after he told a supervisor, “I know how to deal this game, I don’t need you to walk me through this.” On October 17, 2006 was counseled because while in break room talking about supervisors, claimant said, “this casino has the worst box people (supervisors of games) of anywhere I’ve ever dealt with before.”

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Claimant's reference to supervisors as "fool rates" and repeated flippant and demeaning comments to and about coworkers and supervisors, especially in front of customers, after having been repeatedly warned and suspended is evidence of willful disregard of employer's instruction and is misconduct. Benefits are denied.

DECISION:

The April 2, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs