

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINCOLN BARTUSEK**  
Claimant

**APPEAL NO. 07A-UI-08778-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK AND CASINO INC**  
Employer

**OC: 08/12/07 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Lincoln Bartusek, filed an appeal from a decision dated September 7, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 1, 2007. The claimant participated on his own behalf. The employer, Prairie Meadows, participated by Employee Relations Manager Michelle Wilke.

**ISSUE:**

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

**FINDINGS OF FACT:**

Lincoln Bartusek was employed by Prairie Meadows from November 29, 2004 until August 28, 2007, as a full-time assistant poker shift manager. On August 14, 2007, the claimant was suspended pending investigation of his license by the Iowa Racing and Gaming Commission (IRGC). On August 28, 2007, the employer received an e-mail from IRGC stating Mr. Bartusek's license had been suspended. It is against Iowa law to allow someone without a license to continue working in the casino without facing possible fines or loss of its own gaming license. He was notified by letter he was discharged on August 28, 2007.

The claimant has filed an appeal from the suspension of his license, but no hearing or decision has occurred as of the date of the hearing.

**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 is required to obtain, and maintain, a gaming license in order to continue his employment. This is similar to a truck driver having a valid commercial driver's license in order to continue working. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. Cook v. IDJS, 299 N.W.2d 698 (Iowa 1980). The claimant's license was no longer valid and his employment could not continue and the administrative law judge considers the reasoning in the above case applicable in this one. The claimant lost his gaming license and could not therefore continue to work. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of September 7, 2007, reference 01, is affirmed. Lincoln Bartusek is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw