

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R HULETT
Claimant

APPEAL NO. 13A-UI-05026-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO**
Employer

OC: 12/16/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated April 26, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice was sent to the parties, a telephone conference hearing was held on June 4, 2013. The claimant participated personally. The employer participated by Pam Anderson, the human resources generalist. The record consists of the testimony of Pam Anderson and the testimony of John Hulett.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The employer is in the gaming industry. The claimant was most recently hired on March 11, 2013. He is a full-time seasonal employee for the security office. The claimant's last day of work was April 1, 2013. He was terminated on April 5, 2013.

The claimant was terminated because he violated regulations of the Iowa Racing and Gaming Commission and the employer. On April 1, 2013, the claimant allowed an individual to have access to the "backside" of the facility where the animals are kept. The claimant did not know that this person was barred from the backside as he did not have access to the logs where that information was recorded. The individual in question told the claimant that he had a meeting with "Chad," who is an assistant to the racing director. The claimant accepted this individual's word and did not check for a gaming license or properly identify the vehicle this individual was driving. The claimant was the only security person working and he could see exactly where the individual was going. The individual would have no access to the animals. He made a judgment call to let the individual go see Chad.

The claimant's gaming license has not been suspended due to this incident.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The most reasonable inference from the evidence is that the claimant made an error of judgment or discretion in allowing an individual access to the backside. The claimant was not aware that this individual had been barred from the backside. He had been on vacation and not seen the logs where that information was kept. The claimant did not follow the employer's rules to the letter but he credibly explained that he was the only security person on duty and he could observe this individual and where he was going. He did not feel it was necessary to follow him and his reason for wanting access to the backside was reasonable. There is no evidence that the claimant had been warned or disciplined about this type of behavior in the past. No animals were harmed. Safety of the animals is the main reason for this regulation. Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 26, 2013, reference 01, is affirmed. Benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css