

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED ROBINETTE

Claimant

APPEAL NO. 13A-UI-06442-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 05/05/13

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 23, 2013, reference 01, which denied unemployment insurance benefits finding the claimant was discharged for violation of a known company rule. After due notice was provided, a telephone hearing was held on July 8, 2013. Claimant participated. Participating as witnesses were Gale Bolin, Grant Rogers and Hannah Beach. The employer participated by Ms. Pam Anderson, Human Resource Generalist.

ISSUE:

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

FINDINGS OF FACT:

Fred Robinette was employed by Prairie Meadows Racetrack & Casino most recently from October 3, 2011 until May 1, 2013 when he was discharged from employment. Mr. Robinette was most recently employed as a full-time floor attendant and was paid by the hour. His immediate supervisor was Cathy Urwin.

Mr. Robinette was discharged from his employment with Prairie Meadows Racetrack & Casino on May 1, 2013 following an incident that had occurred on April 25, 2013. On that date, Mr. Robinette had been distracted while servicing a slot machine at the employer's facility and failed to insert a CDS card that would verify that the machine door had been opened for authorized purposes.

The claimant's mistake triggered a gaming commission incident report as the entry appeared to be for an unauthorized purpose.

Prior to the incident in question Mr. Robinette had been counseled and warned on many occasions about how he performed his duties. Based upon the claimant's ongoing difficulty in performing a number of the aspects of his job as a floor attendant, the employer had concluded that the claimant was in a "wrong job match" and that the claimant was not capable of performing at a level of competence expected by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a

denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

The evidence in the record establishes that Mr. Robinette did not intentionally violate the company’s policies and procedures by failing to insert a CDS card in the slot machine when servicing it. The claimant was distracted at the time but believed that he was following the proper procedures. The evidence in the record establishes that Mr. Robinette has had ongoing issues in the performance of his duties to the level of competence expected by the employer and that the employer had concluded that claimant may not possess the ability to perform his duties in the way the employer expected.

While the decision to terminate Mr. Robinette may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence does not establish intentional, disqualifying misconduct but that the claimant did not have the ability to function at the level of competence expected by the employer. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated May 23, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs