

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHARLES F BROWN
3922 COLUMBIA ST
DES MOINES IA 50313

PRAIRIE MEADOWS RACETRACK
& CASINO INC
PO BOX 1000
ALTOONA IA 50009-1000

Appeal Number: 06A-UI-00448-DWT
OC: 12/11/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Charles F. Brown (claimant) appealed a representative's January 9, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Prairie Meadows Racetrack & Casino, Inc. (employer) would not be charged because the claimant had been discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2006. The claimant participated in the hearing. Dan Beyers, the assistant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 21, 1998. The claimant worked as a full-time line cook. The claimant understood the employer would discharge an employee if the employee reported to work intoxicated or was in the casino intoxicated even when the employee was not working. The employer's policy further provides that if an employee submits to a Breathalyzer test and it is positive, the employee must undergo treatment to retain employment. If an employee refuses to submit to a breathalyzer test, the employer automatically discharges the employee.

On October 14, 2005, the claimant was not working but came to work to pick up his check. While at the employer's facility the claimant had too much to drink, became intoxicated and showed physical signs of intoxication by being unable to stand. Security officers came to assist the claimant and brought the claimant to an office. The security officers follow this procedure for all guests who appear intoxicated. While in the office, the employer asked the claimant to take a Breathalyzer test. Even though the employer reminded the claimant he could be discharged if he refused to take the test, the claimant refused to take the Breathalyzer test. The employer suspended the claimant on October 14.

On October 19, 2005, the employer discharged the claimant for violating a written rule – appearing in the casino, even when not working, while under the influence of alcohol or for being intoxicated at the casino.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew about and understood the employer's policy that an employee would be discharged if he was at the casino while he was intoxicated even when the employer was not working. The claimant made the decision to drink so much at the casino on October 14 that he became intoxicated. Finally, on October 14, the claimant refused to submit to a Breathalyzer test even though he understood his refusal meant the employer would discharge him.

The claimant's actions and decisions on October 14, 2005 amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of December 11, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 9, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 11, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/pjs