

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOSES D LUL
Claimant

APPEAL NO. 13A-UI-14221-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

OC: 11/17/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 23, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on January 21, 2014. Claimant participated. Employer did participate through Gina Vitiritto-Robinson, Employee Benefits Manager.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a casino floor attendant beginning on January 22, 2001 through November 22, 2013 when he was discharged. The claimant was discharged under the employer's progressive disciplinary policy when he reached the final step. When the claimant pays a jackpot after receiving the paperwork from the cage cashier it is part of his job duties to review the paperwork, including checking the cashier's math, to insure that it is all correct. The claimant paid a jackpot on November 7 and missed catching a math error on the part of the cage cashier that resulted in the customer being shorted .03 cents. The error was caught by the auditors on November 12 and referred to management. The claimant was suspended on November 12 while the investigation was conducted. During his employment the claimant had been given a copy of the employer's handbook and policy manual that put him on notice regarding the progressive disciplinary system. The last step in the progressive disciplinary policy prior to discharge is a five-day suspension. The claimant had been suspended for five days on April 29, 2013. He was suspended for three days on November 5, 2012. He was suspended for one day on June 2, 2012. He was given a written warning in September 2011 and his first verbal warning or counseling in February 2011. Under the employer's policy, once an employee had gone one year with no disciplinary action at all, they start over at the beginning of the steps. Since the claimant never went one year without discipline, he never started over at the beginning of the steps. The claimant had the opportunity to fight any of his discipline by filing a grievance, but he chose not to do so.

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 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer's policy required that the claimant check the math of the cage cashier each and every time he paid out a jackpot. He did not check the math and as a result a customer was paid incorrectly. The employer is required to comply with Iowa Racing and Gaming Commission rules and cannot waive those regulations because they personally like an employee. The claimant had ample notice due to his prior discipline that one more incident could lead to his discharge. While a three cent error is small, the employer followed their own policy and the claimant was not treated any differently than any other employee. His failure to check the math was a violation of the conduct the employer has a right to expect from employees and in this case is misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 23, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs