

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD A WILSON
Claimant

APPEAL NO. 09A-UI-00748-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 12/07/08 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Todd Wilson filed an appeal from a representative's decision dated January 6, 2009, reference 01, which denied benefits based on his separation from Prairie Meadows Racetrack & Casino, Inc. After due notice was issued, a hearing was held by telephone on February 3, 2009. Mr. Wilson participated personally. The employer participated by Michelle Wilkie, Employee Relations Manager.

ISSUE:

At issue in this matter is whether Mr. Wilson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wilson was employed by Prairie Meadows from July 17, 2006 until December 10, 2008. He was last employed full time as a table games dealer. He was discharged based on an allegation that he violated a known company rule.

On or about November 15, 2008, it came to the employer's attention that Mr. Wilson was gambling at work. The employer has a written work rule that prohibits employees from gambling while at work. The security department undertook an investigation to determine the extent of the gambling and to identify all who might be involved. Mr. Wilson had organized a football pool that was participated in by four other employees, including a manager. Mr. Wilson was responsible for taking the bets and the money from participants. All of his activities in reference to the pool took place during his break in either the employee cafeteria or the paddock area where employees sometimes took breaks. The employer's surveillance tapes did not show him taking bets in any areas of the property other than the paddock.

Mr. Wilson discontinued the pool the week before Thanksgiving after a coworker told him it might be in violation of policy. He was interviewed by security on November 25. Management met with him on December 9 and suspended him pending a further determination. He was

notified of his discharge on December 10. Three individuals were discharged as a result of the pool. The above matter was the sole reason for Mr. Wilson's discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Wilson was discharged from his employment with Prairie Meadows. An individual who was discharged from employment is disqualified from receiving job insurance benefit if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Wilson was discharged for gambling while at work. He does not seem to dispute that a sports pool does constitute gambling. However, the wording of the employer's policy is such that a reasonable person might construe it to forbid only that gambling that is offered by the employer to the general public. That is, that he was prohibited from betting on horses, playing the slots or table games, or purchasing lottery tickets while on duty or while in uniform.

The administrative law judge concludes that Mr. Wilson had a good-faith belief that participation in a football pool at work was not forbidden by the employer's policy. Given the reasonableness of his interpretation of the work rule, the administrative law judge cannot conclude that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's expectations. Moreover, he stopped the practice once a coworker alerted him to the possibility it might be a violation of policy. It is noteworthy that his activities regarding the pool took place during breaks and not while he was actively working.

For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving deliberate misconduct. While the employer may have had good cause to discharge Mr. Wilson, conduct that might warrant discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App 1983). Benefits are allowed.

DECISION:

The representative's decision dated January 6, 2009, reference 01, is hereby reversed. Mr. Wilson was discharged but deliberate misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css