

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELVIN AMARA**  
Claimant

**APPEAL NO. 14A-UI-09933-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK  
& CASINO**  
Employer

**OC: 09/07/14**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 23, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an Agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on October 13, 2014. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Megan Sease, Human Resources Recruiter and Training Specialist, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud or dishonesty in connection with the fact-finding interview.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Melvin Amara was employed by Prairie Meadows Racetrack & Casino as a full-time casino floor attendant until September 4, 2014, when the employer discharged him from the employment. Mr. Amara had started the employment in 2008 as a line cook and had started the casino floor attendant position in December 2013. The final incident that triggered the discharge occurred on August 30, 2014, when Mr. Amara accessed a slot machine for legitimate purposes as part of his regular duties, but failed to log information regarding his access to the machine on the log sheet contained within the machine. The employer's standard operating procedures required that employees accessing slot machines log their name, the date of entry, the reason for the entry, and what actions the employee performed on the machine. Mr. Amara was aware of the standard operating procedure, but forgot to make the appropriate log. When questioned by

supervisors later in the shift, Mr. Amara could not remember accessing the particular machine. There were no prior similar incidents.

In making the decision to discharge Mr. Amara from the employment, the employer considered an unrelated incident from June 30, 2014 and a reprimand issued to Mr. Amara on July 9, 2014 in connection with that incident. On June 30, 2014, Mr. Amara had attempted to enter the gaming floor with a person under the age of 21. Gaming regulations prohibit persons from under 21 from entering the gaming floor. In the event a person under 21 was to enter the gaming floor, the gaming regulations require that the employer report the incident. The incident could result in the employer being assessed a substantial fine. The employer witness does not know the relationship of Mr. Amara to the underage person in question. When Mr. Amara was denied entry onto the gaming floor with the underage person, he made one or more additional attempts to enter the gaming floor with that person and then created a disturbance in the casino's restaurant by arguing with staff. When the employer issued the reprimand on July 9, 2014, the employer deemed the reprimand a final warning.

### **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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Mr. Amara was careless and/or negligent on August 30, 2014, when he accessed a slot machine for legitimate purposes, but did not leave the required log documenting his access to the machine. This was an isolated incident and the evidence does not indicate a pattern of careless and/or negligence that would indicate a willful or wanton disregard of the employer's interests. The evidence indicates an earlier, wholly unrelated incident on June 30, 2014, wherein Mr. Amara attempted to gain access to the casino floor with an underage person in his company. That incident was not a current act for purposes of determining Mr. Amara's eligibility for unemployment insurance benefits. Absent a pattern of carelessness and/or negligence that connects the final incident to earlier carelessness and/or negligence, the two isolated and wholly unrelated incidents in evidence were insufficient to establish misconduct in connection with the employment that would disqualify Mr. Amara for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The claims deputy's September 23, 2014, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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