

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REGGIE W WALTER**  
Claimant

**APPEAL NO. 09A-UI-19058-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO**  
Employer

**Original Claim: 11/22/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Reggie W. Walter (claimant) appealed a representative's December 14, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Prairie Meadows Racetrack & Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2010. The claimant participated in the hearing. Mary Jamieson 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 21, 2000. He worked full-time as a second shift facilities supervisor. His last day of work was November 18, 2009. The employer discharged him on that date. The reason asserted for the discharge was unsatisfactory service.

The final incident that led to the discharge occurred on October 24, 2009. That day, a Saturday, the claimant's department was having a "pot luck" supper. The claimant was in the office from about 6:25 p.m. until about 9:50 p.m. During that time, a television was on in the office broadcasting a college football game. The claimant acknowledges that he did keep track of the football, game, but also maintained he continued to perform work, taking care of paperwork and responding to radio calls, the same as if he had been walking around the premises. He asserted that he remained in the office primarily to oversee the pot luck area and to make sure that employees who were coming in for the pot luck did not remain in the area longer than their allowed times. He denies that there was any work that he should have been doing during that time that he did not do; the employer failed to establish what work, if any, the claimant did not do during that time that he normally should have done. The claimant was informed after the fact that the employer's policy only allows televisions to be on to live racing or other specific stations;

he had not previously informed of any policy regarding televisions being on to other events or stations.

After the employer learned of the claimant's being in the office for that period on October 24, on October 28 the employer spoke to the claimant and informed him that there would be an investigation. It is unclear what investigation steps occurred after October 28 or what additional information was gained. The claimant had been given a three-day suspension on April 30, 2009 for unsatisfactory work performance, the final step of the employer's disciplinary process prior to discharge. On November 18, as a result of the October 24 incident after the prior discipline, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the incident on October 24, 2009 after the prior discipline. Assessing the credibility of the witnesses and the reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did something on October 24 that he knew or should have known he should not do, or that he failed to do something that he knew or should have known he was supposed to do. Under the circumstances of this case, the claimant's behavior was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct.

Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 14, 2009 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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