

**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**

**REBECCA A ADAMS  
2402 COURTLAND DR  
DES MOINES IA 50315**

**RACING ASSOCIATION OF CENTRAL  
IOWA  
D/B/A PRAIRIE MEADOWS  
PO BOX 1000  
ALTOONA IA 50009-1000**

**Appeal Number: 05A-UI-05229-RT  
OC: 04/24/05 R: 02  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Racing Association of Central Iowa, doing business as Prairie Meadows, filed a timely appeal from an unemployment insurance decision dated May 12, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Rebecca A. Adams. After due notice was issued, a telephone hearing was held on June 6, 2005, with the claimant participating. Brian Coy, Human Resources Generalist, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recent as a full-time assistant slot machine shift manager, from April 6, 1995, until she was discharged on March 17, 2005. The claimant was, in effect, discharged by the Iowa Racing and Gaming Commission, who oversees all of the casinos in Iowa. The Iowa Racing and Gaming Commission has rules that prohibit anyone from receiving or maintaining a license to work in a casino if that person has been convicted of a serious or aggravated misdemeanor. When the claimant was first employed by the employer in 1995, the claimant obtained a license.

In 2001, two criminal charges were filed against the claimant, of which one resulted in a conviction for an aggravated misdemeanor when the claimant pled guilty to the charge. Although the Iowa Racing and Gaming Commission has rules that require that such a conviction be immediately disclosed to the commission, the claimant did not do so. The commission also has rules that require that a license be renewed every two years and the renewal form contains questions asking about such convictions. For the claimant's 2003 license renewal, the claimant failed to disclose the convictions because she was embarrassed, but the claimant knew that she was supposed to disclose the convictions. The claimant then completed her 2005 renewal form and Iowa Racing and Gaming Commission learned of the claimant's convictions and denied her license and effectively discharged the claimant from her employment with the employer. The Iowa Racing and Gaming Commission, among other things, conducts random background checks, and, apparently, the claimant's criminal conviction for an aggravated misdemeanor came to light as a result of one of those random background checks.

The claimant, throughout her employment of almost ten years, renewed her license every two years and knew that she needed to maintain a license in order to continue to work for the employer. Every employee for the employer must have such a license, and the claimant was aware of this, as well as aware that she herself needed a license. The claimant knew, or should have known, that she also needed to disclose immediately a conviction for an aggravated misdemeanor. The employer itself does not require employees to disclose such convictions, but the employer has rules that require that an employee comply with the rules and regulations of the Iowa Racing and Gaming Commission. When the claimant was convicted, she informed the employer of her conviction, but was given no instructions.

Pursuant to her claim for unemployment insurance benefits filed effective March 20, 2005, the claimant has received unemployment insurance benefits in the amount of \$3,410.00 as follows: \$310.00 per week for 11 weeks from benefit week ending March 26, 2005, to benefit week ending June 4, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The parties agree, and the administrative law judge concludes, that the claimant was effectively discharged on March 17, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for a current act of disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for a current act of disqualifying misconduct. The facts, here, are not in dispute. The claimant became an employee of the employer on April 6, 1995. At all material times hereto, the claimant was fully aware that she needed to maintain a license from the Iowa Racing and Gaming Commission to work in a casino. This license is renewed every two years

and the claimant was fully aware of that. The claimant was also aware that each renewal form required that the claimant disclose any convictions for serious or aggravated misdemeanors. The Iowa Racing and Gaming Commission also requires that it be immediately informed if a licensed individual is convicted of a serious or aggravated misdemeanor. The claimant testified that she was not aware of this. For the reasons discussed below, the administrative law judge concludes that the claimant's purported ignorance of some of these laws is not credible.

In 2001, the claimant pled guilty and was convicted of an aggravated misdemeanor. The Iowa Racing and Gaming Commission rules require the denial of a license to someone who is convicted of an aggravated misdemeanor. The rules also require that one who is so convicted immediately notify the commission. The claimant testified that she was unaware that such a conviction would cause her to lose her license or that she was required to immediately inform the commission of such a conviction. Her testimony, again, is not credible. The claimant was an employee of the employer for ten years and, as such, had a license and renewed the license every two years and saw on the renewal form a question asking about convictions. The claimant concedes that she knew she had to disclose the convictions. Why would one have to disclose convictions if those convictions did not have some effect upon the individual's license? To claim otherwise is simply not credible, especially in view of the claimant's long-standing employment. Accordingly, the administrative law judge concludes that the claimant knew, or should have known, that such a conviction would cause her to lose her license and knew, or should have known, that she would need to report such a conviction immediately and did not.

Finally, the employer has rules that require that an employee maintain a current active license from the Iowa Racing and Gaming Commission and comply with all rules and regulations of the commission. The claimant was aware of that as well. Accordingly, the administrative law judge is constrained to conclude here that the claimant's failure to immediately notify the Iowa Racing and Gaming Commission of the conviction in 2001 for an aggravated misdemeanor, and her further failure to disclose it on the 2003 renewal, and again on the 2005 renewal, were all deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. The administrative law judge further concludes that the claimant's failures were current acts of misconduct. It is true that the claimant was not discharged for these acts for some four years after the convictions, but the claimant was the party responsible for the delay in those convictions coming to light. The claimant did not inform the commission immediately of the convictions, nor did she report the convictions in either of her two license renewal forms in 2003 and 2005. This is not a situation where the employer or the commission sits on information it has and waits and then discharges the claimant later. Here, the claimant was the one who concealed the information and she cannot now take advantage of concealing that information, thereby delaying her discharge, to claim that her discharge was not a current act of disqualifying misconduct.

The administrative law judge is not without sympathy for the claimant, who is a long-time employee of the employer and then lost her license and, therefore, was discharged. However, the administrative law judge cannot escape the fact that the claimant was aware that such a criminal conviction had an impact on her employment, but, nevertheless, committed the acts giving rise to the criminal conviction for an aggravated misdemeanor. The claimant's criminal acts giving rise to her conviction for an aggravated misdemeanor all occurred after the claimant was employed by the employer. In Kleidosty v. Employment Appeal Board, 482 N.W.2d 416 (Iowa 1992), the Iowa Supreme Court held that the commission of a crime by an employee, which crime is expressly prohibited by the employer, is disqualifying misconduct. The Court focused on a violation of a specific work rule. Here, the claimant violated specific rules of the

Iowa Racing and Gaming Commission and she knew, or should have known, that such a violation would result in the loss of her license and the ultimate loss of her job or discharge. The claimant also failed to disclose the conviction for a number of years. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$3,410.00 since separating from the employer herein on, or about, March 17, 2005, and filing for such benefits effective March 20, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 12, 2005, reference 01, is reversed. The claimant, Rebecca A. Adams, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$3,410.00.

kjw/pjs