

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEN MALAYTHONG
Claimant

APPEAL NO. 14A-UI-11194-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

**OC: 10/05/14
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino (employer) appealed an unemployment insurance decision dated October 27, 2014 (reference 01) which held that Ken Malaythong (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2014. The claimant participated in the hearing. The employer participated through Megan Sease, Human Resources Recruiting and Training Specialist.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time table games dealer on February 10, 2014 and became full time on April 13, 2014. He was suspended on September 25, 2014 pending a disciplinary investigation and was discharged on October 1, 2014 for violation of the workplace violence policy, among others. The employer expects employees to be ambassadors of Prairie Meadows both in and outside of the workplace. Employees are expected to act with dignity and professionalism and are required to treat coworkers and guests with courtesy and respect. The employer has zero tolerance on workplace violence but even verbal abuse, threatening, or disturbing behavior may result in immediate termination. The claimant signed for receipt and acknowledgment of the employer's policies on February 10, 2014.

The claimant completed his shift on September 25, 2014 at 1:00 a.m. At approximately 1:40 a.m. security was called for a possible domestic involving the claimant outside the casino entrance. The claimant and his wife were in a loud confrontation near the entrance on the south circle of the valet area. An Altoona police officer and at least one casino security officer attempted to resolve the situation. The claimant said he was tired and wanted to go home but his wife wanted to stay there. He grabbed his wife by the shoulders and “violently” shook her according to the employer’s testimony after reviewing the surveillance footage. The claimant admitted he grabbed his wife but said it was only to get the car keys. He testified that she “freaked out” after that. The claimant admitted five or six people came running out towards him asking him what he was doing and he said they must have thought he was “hurting” his wife but he was not. The incident took place in a public location as guests walked past.

The claimant filed a claim for unemployment insurance benefits effective October 5, 2014 and has received benefits after the separation from employment in the amount of \$2592. Human Resources Recruiting and Training Specialist Megan Sease participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 1, 2014 for violation of company policy. He admits he was upset with his wife on the night of September 25, 2014 and that he grabbed her to get his car keys. It might typically be a private matter except that the violent incident occurred on the employer’s property in front of customers while the claimant was wearing his work uniform and his wife was a guest at the casino. The claimant’s admission and his testimony that five people came running towards him out of concern for his wife is sufficient to establish he violated multiple company policies. His actions show a substantial disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer’s failure to participate, that employer’s account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$2592 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated October 27, 2014 (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$2592 in benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

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