

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN D MATTHEWS
Claimant

APPEAL NO. 10A-UI-05414-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE RACING ASSOCIATION LTD
Employer

**Original Claim: 03/07/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 31, 2010, reference 01, that denied benefits based upon his separation from Dubuque Racing Association, Ltd. After due notice was issued, a telephone hearing was held on May 28, 2010. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Stephen Matthews was employed by Dubuque Racing Association, Ltd. from April 11, 2003, until March 9, 2010, when he was discharged from employment. Mr. Matthews worked as a full-time cashier and was paid by the hour.

The claimant was discharged after making three cash handling mistakes in a one-month period that caused a shortage of over \$120.02. Under company policy, cashiers are subject to discharge if they exceed that amount in shortages in a 30-day period. Prior to being discharged, the claimant had been warned regarding cash shortages.

Mr. Matthews did not intentionally cause cash shortages. The shortages apparently occurred due to the volume of transactions that he was required to make and the lack of assistance from other cashiers at times. After being warned, the claimant attempted to the best of his ability to minimize or eliminate any cash handling mistakes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. See Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant the denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The evidence in this case does not establish wrongful intent on the part of Mr. Matthews. Due to the volume and complexity of the cash transactions that the claimant was required to perform on a regular basis, the claimant, at times, was unable to avoid cash errors. After being warned, the claimant attempted to the best of his ability to improve his performance but was not able to improve to a level of competency expected by the employer. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, misconduct sufficient

to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 31, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw