

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JARED T HESS**

Claimant

**APPEAL NO. 11A-UI-02999-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**

Employer

**OC: 01/30/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 8, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2011. Claimant participated. Employer participated by Pam Anderson, human resources recruiter. The record consists of the testimony of Pam Anderson and the testimony of Jared Hess.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an entertainment company that provides casino gaming. The claimant was hired on February 19, 2007, as a full-time table game dealer. His last day of work was January 20, 2011. He was terminated on January 26, 2011, for insubordination.

The incident that led to the claimant's termination occurred on January 20, 2011. The claimant was dealing a game called pai gow. Players are shown a fan of five cards and another fan of two cards. They then place bets and the dealer's hand of five cards and two cards is shown and payouts made. This particular game has a progressive payout and the payout could exceed \$200,000.00.

In order to maintain the integrity of the game, it is monitored by surveillance cameras. Surveillance employees must be able to see each card. Dealers are required to "show the green", which means that whoever is doing the surveillance must be able to see green felt in between each card. The amount of green needed to be seen varies, depending on the particular manager. The game is played on a half circle table. The players sit around the circle and the dealer stands on the other side. The ability to "show the green" depends on the number

of players at the table and is further restricted by the distance that must be kept between sensors and the cards.

On January 20, 2011, the claimant was approached several times between 6:00 p.m. and 8:00 p.m. about “showing the green.” The claimant told each manager that he would do his best to “show the green.” The claimant went on his break at 9:30 p.m. When he returned, another dealer was at the table. The claimant was taken to the shift manager’s office. He was placed on suspension pending further investigation.

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

Iowa Code § 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The definition of misconduct excludes unsatisfactory job performance. The employer has the burden of proof to show misconduct.

The issue in this case is whether the claimant’s failure to “show the green” while he was dealing a game of pai gow is insubordination. Between 6:00 p.m. and 8:00 p.m. the claimant was told

several times that he was not showing enough green so that the number of cards could be accurately viewed by surveillance personnel. The claimant testified that he was told that he was not showing enough green and that in each instance he said he would try to do so. He said that the amount of space needed between each card varied from one millimeter to one inch, depending on the manager. The amount of space he could put between each card was constrained by the size of the table; the number of players; and the distance that had to be kept from sensors. The cards were also sticky, which presented further difficulties. The claimant did not mention the stickiness of the cards when he was talked to on the floor because he was afraid he might be cited for insubordination.

After carefully considering the testimony, the administrative law judge concludes that there is insufficient evidence to establish misconduct. Clearly the claimant was not performing the job that night to the employer's satisfaction. The claimant said that he would try to show more green. He did not hear anything further from the employer after 8:00 p.m. until he returned from his break at 9:40 p.m. He logically assumed that he had corrected any problem identified with dealing the cards for that game. The administrative law judge accepts the claimant's testimony that he was aware of the problem and he was trying to correct it. The claimant's performance does not constitute a deliberate decision on his part to ignore his employer's instructions. Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 8, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs