

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALAN G KESSLER**

Claimant

**APPEAL NO. 09A-UI-15082-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS**

**RACETRACK & CASINO INC**

Employer

**Original Claim: 09/13/09**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alan Kessler filed an appeal from a representative's decision dated October 2, 2009, reference 01, which denied benefits based on his separation from Prairie Meadows Racetrack & Casino, Inc. After due notice was issued, a hearing was held on November 10, 2009, in Des Moines, Iowa. Mr. Kessler participated personally and was represented by Alfredo Alvarez and Joseph Glazebrook, Attorneys at Law. Exhibits A and B were admitted on Mr. Kessler's behalf. The employer participated by Mary Jamieson, Human Resources Administrative Assistant. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Kessler was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kessler was employed by Prairie Meadows from June 6, 2005 until September 17, 2009. He was last employed full-time as a supervisor in player services. On September 9, 2009, he overheard a guest complaining about the casino's valet service. The guest indicated that the valet service had lost both his and his wife's vehicle on several occasions. Mr. Kessler did not play any role in valet services.

Later during his shift on September 9, Mr. Kessler was speaking with a table games dealer while the two were in the break room. He discussed the fact that the customer was complaining about the valet service and his lost vehicles. Later that day, the table games dealer mentioned the issue to the customer. Mr. Kessler was suspended on September 9 for telling the dealer about the problem. His September 17, 2009 discharge was due solely to his actions of September 9. His actions were considered to be a violation of the employer's policy regarding confidentiality.

## REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order to impose a disqualification from benefits, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Mr. Kessler was discharged for telling a coworker that a specific customer was having problems with the valet service. The information was not so clearly confidential that he knew or should have known not to discuss it with others. Moreover, the conversation was not with someone unrelated to Prairie Meadows.

Mr. Kessler's conduct did not evince a willful or wanton disregard of the employer's interests or standards. He did not have any history of disclosing confidential information. At most, his actions represented an isolated instance of poor judgment. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge Mr. Kessler, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

## DECISION:

The representative's decision dated October 2, 2009, reference 01, is hereby reversed. Mr. Kessler was discharged by Prairie Meadows, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw