

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNEDY L MARTIN
Claimant

APPEAL NO. 08A-UI-00265-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 12/09/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kennedy L. Martin (claimant) appealed a representative's January 4, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Prairie Meadows Racetrack & Casino, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on February 5, 2008. The claimant participated in the hearing and presented testimony from one other witness, Christine Eaton. Michele Wilkie appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 6, 2004. He worked full time as a table games dealer in casino operations. His last day of work was December 9, 2007. The employer suspended him that day and discharged him on December 14, 2007. The reason asserted for the discharge was progressive discipline and failure to follow instructions of a supervisor.

The claimant's progressive discipline considered at the point of termination began with a verbal warning on August 18, 2006 for a missed punch. He also had warnings on October 4 and October 19, 2006 for missed punches, a one-day suspension imposed November 2, 2006 for a missed punch, and a three-day suspension imposed August 31, 2007 for a missed punch.

On December 9, the claimant returned to the craps table at approximately 2:00 p.m. after a break. A customer who had already been throwing while the claimant had been on break threw again and one of the die failed to hit the back wall of the table. There was a substitute supervisor on the table, who told the claimant he should give the customer a warning about needing to hit the back wall with both die. Unknown to the claimant, while he had been on

break and Ms. Eaton had been the dealer responsible for running the table, there had been prior throws by the customer where both die did not hit the back wall, but the supervisor had not instructed Ms. Eaton to warn the customer. Since the claimant had only seen the one roll by the customer, and the customer was an older man who was a regular who the claimant knew did not have a sufficient physical strength to always hit the back wall with both die, the claimant responded that he was not comfortable giving the warning at that point, and asked the supervisor why she could not warn the customer. The supervisor then became upset and began yelling at the claimant that he was to do what he was instructed to do. The claimant responded by requesting that a relief dealer be brought onto the table so he and the supervisor could go upstairs and discuss the matter. The supervisor refused. After the regular supervisor for the table returned, the substitute supervisor directed that the claimant be removed from the table and sent home.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the progressive discipline and the failure to follow the supervisor’s instructions on December 9, 2007. Under the circumstances of this case, the claimant’s resistance to reprimand the customer as instructed was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s January 4, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css