IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROY E NOBLE
2680 NE 51ST CT
DES MOINES IA 50317-7042

PRAIRIE MEADOWS RACETRACK & CASINO INC
PO BOX 1000
ALTOONA IA 50009-1000

Appeal Number: 06A-UI-02590-R
OC: 02/05/06 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Roy E. Noble, filed a timely appeal from an unemployment insurance decision dated February 24, 2006, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, at the claimant's request on March 27, 2006, with the claimant not participating. The claimant did not appear for the in-person hearing. Gina Vitiritto, Employee Relations Manager, and Clint Pursley, Director of Security, participated in the hearing for the employer, Prairie Meadows Racetrack & Casino, Inc. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

In response to a message from the claimant's wife, the administrative law judge called the claimant's wife and spoke to her on March 13, 2006, at 1:28 p.m. She requested that the in-person hearing be rescheduled because her husband, the claimant, was on the road. She informed the administrative law judge that he had a new job and that he worked from 7:00 a.m. and was back between 6:00 p.m. and 8:00 p.m. every day. The administrative law judge explained to the claimant's wife that in-person hearings could not be conducted to accommodate the claimant's work schedule. The claimant's wife did not know when the claimant would be able to do an in-person hearing. The administrative law judge explained to the claimant's wife that he was not going to reschedule the in-person hearing since the claimant had requested such a hearing. However, the administrative law judge would consider rescheduling the hearing for a telephone hearing in which case the claimant might be able to participate by a cell phone or while on his route or while on the road. The claimant's wife then asked about a withdrawal of the claimant's appeal. The administrative law judge explained that he could not take a withdrawal from her but if the claimant wanted to withdraw his appeal he should call the administrative law judge or, in the alternative, send in or fax in a written withdrawal. The administrative law judge heard nothing more from either the claimant or his wife.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time security officer from April 10, 2000, until he was discharged on February 7, 2006. The claimant was discharged for violating a final written warning when, on January 25, 2006, the claimant allowed a minor onto the casino floor. The Iowa Racing and Gaming Commission has rules prohibiting minors from being on the casino floor even if they are accompanied by an adult. On January 25, 2006, the claimant was stationed at the main entrance to ensure that minors did not enter the casino floor. While talking to someone else two minors entered the casino along with a third person, an adult. The minors were on the floor for a few minutes. The claimant was then discharged.

On October 21, 2005, the claimant was suspended for two days and given a final warning as shown at Employer's Exhibit One. This final warning was because he allowed a groom into an area in which he had been instructed to admit no one. The claimant was working in the horseracing area and a suspicious liquid was found in a container. The employer's veterinarian found the liquid and instructed the claimant to allow no one into the area. However, the claimant allowed grooms into the area and the liquid disappeared. The claimant was then given a final warning and suspended for two days for this and other issues. When questioned the claimant responded that he must have misunderstood his orders. On November 11, 2002, the claimant was given a written warning for allowing a horse onto the employer's horseracing premises without a negative Coggins certificate. Coggins is a very contagious and serious horse disease and all horses admitted to the premises of the employer must have a negative Coggins certificate indicating that the horse does not have Coggins disease. This is required by the Administrative Code for the Iowa Racing and Gaming Commission. The claimant allowed a horse on the grounds without the negative Coggins certificate and received a warning therefore.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Gina Vitiritto, Employee Relations Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on February 7, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Vitiritto credibly testified that the claimant was discharged when, while as a security officer stationed at the entrance to the casino floor, he allowed two minors to enter the casino floor in violation of rules by the Iowa Racing and Gaming Commission. The claimant did so because he was speaking to someone else at the time. The claimant had received a final warning and suspension on October 21, 2005 for allowing grooms into a room in the horseracing area against the specific instructions of the employer's veterinarian. The employer's veterinarian had found a suspicious liquid in a container and instructed the claimant to allow no one into the room. However, the claimant allowed grooms into the room and the liquid container disappeared. The claimant stated at the time that he must have misunderstood his orders. On November 11, 2002, the claimant received a written warning for permitting a horse onto the

employer's premises without a negative Coggins certificate concerning a very contagious, serious horse disease. The Iowa Racing and Gaming Commission has rules in the Administrative Code prohibiting a horse being on the premises without a negative Coggins certificate.

On the record here, the administrative law judge is constrained to conclude that the employer has not demonstrated by a preponderance of the evidence that the acts of the claimant giving rise to his discharge were willful or deliberate. However, the employer has demonstrated evidence that the claimant's acts were carelessness or negligence. The issue then becomes whether the claimant's acts were carelessness or negligence to such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge concludes that the claimant's acts do establish carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Just three months earlier the claimant had received a final warning and was suspended two days for allowing grooms into an area where he had been instructed to allow no one. The claimant had also received a written warning on November 11, 2002 for permitting a horse to enter the premises without a negative Coggins certificate. These acts were at least carelessness or negligence. Because of the warnings and the serious breaches by the claimant of rules by the Iowa Racing and Gaming Commission, the administrative law judge is constrained to conclude that the claimant's acts were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

DECISION:

The representative's decision of February 24, 2006, reference 01, is affirmed. The claimant, Roy E. Noble, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct.

cs/tjc