

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDANCE E MOSLEY
Claimant

APPEAL NO. 09A-UI-00749-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 11/09/08 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Candace Mosley filed an appeal from a representative's decision dated January 15, 2009, reference 01, which denied benefits based on her separation from Prairie Meadows Racetrack & Casino, Inc. After due notice was issued, a hearing was held by telephone on February 3, 2009. Ms. Mosley participated personally and was represented by Jay Kamath, Attorney at Law, who offered additional testimony from Ruth Delgado. The employer participated by Michelle Wilkie, Employee Relations Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Mosley was employed by Prairie Meadows from July 5, 2005 until November 18, 2008. She was last employed full time as a poker dealer. She was discharged because the employer believed she fabricated her reason for being absent on November 7 and 8.

Ms. Mosley's hours were from 10:00 p.m. until 6:00 a.m., Tuesday through Saturday. After her shift on the morning of November 7, she went to Meskwaki Casino to gamble. At 3:30 p.m., she called the employer to advise that she would not be at work because of road conditions. When she was outside at 3:30, it had just started to snow and there was no ice on the roads. Ms. Mosley returned to the casino and continued to gamble. When she was outside again between 6:00 and 7:00 p.m., there was less than one inch of snow on the ground. According to the employer's check of the weather, there was less than one-tenth of an inch of snowfall on November 7.

Ms. Mosley remained at Meskwaki overnight on November 7. She called the employer at approximately 6:00 p.m. on November 8 to report that she would be absent due to inclement

weather. According to her testimony, she did not go outside to ascertain the weather conditions on November 8. According to the employer's check of the weather, the temperature was 34 degrees with light snow. Another Prairie Meadows employee saw Ms. Mosley playing poker at Meskwaki on November 8. Ms. Mosley again remained overnight at Meskwaki on November 8. She did not leave until Sunday, November 9, at approximately 4:00 a.m. When she reported to work on November 11, she was sent home pending an investigation.

The employer did not have any other employees call in absent due to weather conditions on either November 7 or November 8. Based on the belief that Ms. Mosley had falsified her reasons for absence, she was discharged on November 18, 2008. She was not discharged because of her attendance as a whole, but because of the perceived dishonesty in reporting the two final absences.

REASONING AND CONCLUSIONS OF LAW:

Ms. Mosley was discharged by Prairie Meadows. An individual who was discharged from employment is disqualified from receiving job insurance benefits if she was discharged 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). Ms. Mosley was discharged because the employer believed she gave false information regarding her reason for being absent on November 7 and November 8. The parties do not dispute that there was some snowfall on both dates. Therefore, the question is whether the weather prevented Ms. Mosley from reporting to work or whether she was absent because she wanted to remain at Meskwaki and play poker.

Ms. Mosley called the employer at 3:30 p.m. on November 7, over six hours before she was scheduled to be at work. She had already decided she was not going to work even though it was just starting to snow and there was no ice on the roadways. She could not have predicted what the weather would be like when she needed to leave in order to get to work by 10:00 p.m. The fact that she returned to the casino in spite of the fact that it was starting to snow demonstrates a lack of good-faith effort. Ms. Mosley testified that there was less than one inch of snow on the ground when she checked between 6:00 and 7:00 p.m. on November 7. In Iowa, it is not unreasonable to expect an employee to report for work when there has been less than one inch of snow accumulated. Based on the foregoing, it is concluded that the weather did not prevent Ms. Mosley from reporting for work on November 7.

By her own testimony, Ms. Mosley did not go outside to check the weather before calling the employer on November 8. She also testified that there was no snow on the ground when she left at approximately 4:00 a.m. on November 9. Since any accumulation of snow on November 8 was gone by the early morning hours of November 9, it seems unlikely that there was any significant accumulation of snow. The employer testified that the temperature on November 8 was 34 degrees. Given this factor, it seems unlikely that there would have still been ice on the roads. For the above reasons, the administrative law judge is not inclined to believe that road conditions played a part in the absence of November 8.

The administrative law judge concludes that Ms. Mosley was dishonest with her employer when she cited inclement weather as the reason for her absences of November 7 and 8. Although there may have been inclement weather on both dates, it was not such that it prevented her from reporting to work. Remaining off work in order to gamble constituted a substantial disregard of the standards the employer had the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated January 15, 2009, reference 01, is hereby affirmed. Ms. Mosley was discharged by Prairie Meadows for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css