

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW MILLS

Claimant

APPEAL NO. 09A-UI-15378-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**

Employer

OC: 09/06/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Andrew Mills filed an appeal from a representative's decision dated September 30, 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 12, 2009 in Des Moines, Iowa. The employer participated by Rebecca Fischer, Recruiter. Mr. Mills did not appear for the hearing.

ISSUE:

At issue in this matter is whether Mr. Mills 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. Mills was employed by Prairie Meadows from February 20, 2007 until September 7, 2009. He was employed full time as a table games dealer. He was discharged because of his attendance. He received a written warning about his attendance on February 26, 2008 and was placed on 90-day's probation on March 20, 2008.

Mr. Mills took a personal day on December 16, 2008 because of weather conditions. He missed a number of days in February, March, April and June of 2009. As a result, he received a written warning regarding attendance on June 19, 2009. He was absent July 13 and 14 for personal business. He was again placed on 90-day's probation on July 15. The decision to discharge was based on the fact that Mr. Mills was two hours late on September 2 because he overslept. He was notified of his discharge on September 7, 2009. Attendance was the sole reason for the discharge.

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). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Mills had ample notice that his attendance was jeopardizing his continued employment with Prairie Meadows. In spite of the written warning on June 16, he took July 13 and 14 for personal business. Because the absences were for personal business, they are unexcused. Mr. Mills knew or should have known that any attendance infractions during the probationary period starting July 15 could result in the loss of his employment. However, he did not take steps to ensure his timely arrival at work on September 2. Oversleeping is not reasonable grounds for missing time from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Mr. Mills accumulated three periods of unexcused absenteeism within a period of approximately seven weeks. Given the warnings he had received, this was excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated September 30, 2009, reference 01, is hereby affirmed. Mr. Mills was discharged by Prairie Meadows for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css