

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN G PAGAN**  
Claimant

**APPEAL NO. 09A-UI-15696-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK  
& CASINO INC**  
Employer

**OC: 09/20/09**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct/Requalification

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 13, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 17, 2009. Claimant participated through Interpreter Donna Scharfe. Employer participated through Human Resources Generalist Tracey Casey.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a seasonal line cook from April 24, 2009 and was separated on June 16, 2009. When he completed his application for hire at Prairie Meadows he answered 'no' to the question of whether he had ever been charged with a crime. Claimant thought the question only applied to Iowa law but the FBI found multiple charges, including felony convictions, against him in New York as recent as 2004. The question did not specifically include or exclude Iowa. Employer interviewed the people involved in his hire and who interpreted for him during that process and found, as the administrative law judge (ALJ) does here, that he verbally denied going to court or spending time in jail for the 2004 assault conviction for which he was imprisoned and misled the interpreter about that to the extent that he was told if he did not go to court or jail he did not need to report it.

According to administrative records, the claimant has requalified for benefits since the separation from the employer as of October 1, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for reasons related to job misconduct.

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.

Claimant's failure to fully and accurately disclose his criminal background on his job application with Prairie Meadows is misconduct. However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

#### **DECISION:**

The October 13, 2009 (reference 01) decision is modified in favor of the appellant. The claimant was discharged from employment for reasons related to job misconduct, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged. If claimant can produce payroll records from his current employer Mercy Hospital that he has earned \$4,590.00 or more in gross wages

since his separation from Prairie Meadows on June 16, 2009 and before October 1, 2009 he should take that to Iowa Workforce Development (IWD) to establish an earlier requalification date.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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