

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TANYA RIDDLE

Claimant

APPEAL NO. 14A-UI-08312-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 07/20/14

Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino (employer) appealed an unemployment insurance decision dated August 8, 2014, (reference 01), which held that Tanya Riddle (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2014. The claimant participated in the hearing. The employer participated through Gina Vitirito, Employee Benefits Manager.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time valet/parking attendant from August 24, 2009, through July 24, 2014. She was discharged for providing false information when she called in her absence on June 29, 2014. The claimant was scheduled to work at 8:00 a.m. on Sunday, June 29, 2014, and she called in at 7:08 a.m. and stated she could not work due to illness associated with her Family Medical Leave Act (FMLA).

A co-worker reported to the employer during that same week that the claimant was actually out of state on June 29, 2014. The employer questioned the claimant on July 3, 2014, and the claimant admitted she was in Arkansas on June 29, 2014. The employer's policy regarding falsification of the reason for an absence is grounds for immediate termination and not subject to the employer's progressive disciplinary policy.

After speaking with the claimant, the employer conducted an investigation and suspended the claimant on July 20, 2014. She was discharged on July 24, 2014.

The claimant filed a claim for unemployment insurance benefits effective July 20, 2014, and has received benefits after the separation from employment in the amount of \$2,220.00. Employee Benefits Manager Gina Vitiritto participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 24, 2014, for providing false information for her absence on June 29, 2014. She called in late on that date and stated she could not work due to illness associated with FMLA, but the claimant was actually in Arkansas when she was scheduled to work. The employer was aware of the falsification on July 3, 2014, but failed to discharge her for another 21 days.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988). Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated August 8, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs