

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HELENA K KAHN**  
Claimant

**APPEAL NO. 13A-UI-04582-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 03/24/13  
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Work/Illness or Injury  
Section 96.5-2a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated April 15, 2013, reference 01, that held she voluntarily quit without good cause due to a non-work-related illness or injury on February 11, 2013, and benefits are denied. A hearing was held on May 22, 2013. The claimant, and husband, Menke Wonzon, participated. Pamela Anderson, HR Representative and Jim Allpress, Loss Prevention Manager participated for the employer.

**ISSUES:**

Whether claimant was discharged for misconduct in connection with employment.

Whether claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began work for the employer on May 18, 2010 as full-time a housekeeper. Claimant suffered a job-related eye injury on June 12, 2012. Claimant was off work on a worker's compensation injury and paid TTB weekly benefit for several months.

Claimant returned to work for a period of time but suffered another chemical injury to her eye and was off work beginning February 11, 2013. The employer received medical information claimant was released to return to work by University of Iowa hospitals effective March 13. A dispute arose about this return to work date that involved attorneys on both sides.

The employer believed the return to work date was moved to April 9. Claimant had a telephone discussion with an employer representative before this date and she had a concern about whether it was advisable to her health to do so. Claimant contacted her attorney who recommended she go back to work and he would check on any work restriction.

Claimant came into work on Friday April 12 and spoke with a housekeeping supervisor. She was told to go home because she had not been put on the work schedule. She was told to wait for further instruction.

The employer called claimant to a work place meeting on April 15. The employer discharged claimant for excessive absences. She had been put on 90-day probation on January 15, 2013 for this reason. The employer counted twelve absences against claimant. One absence was FMLA, three for worker's compensation, and the others self-reported illness. Two absences were not reported prior to work start time on January 29, 2012 and January 6, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer had failed to establish claimant was discharged for misconduct on April 15, 2013 as her excessive absences are based on excusable reasons.

Only two of the twelve absences involve an issue of improper report and remaining ones are for illness or injury issues. Since the employer had not scheduled claimant when she reported to work on April 12, there is no absence issue for this reason. Job disqualifying misconduct is not established.

Claimant left work due to a job-related injury on February 11, 2013 and received TTD worker's compensation. There is no employment separation adjudication issue until after claimant files for UI benefits on March 24.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes claimant is able and available for work effective her return to work release date without restrictions effective March 13, 2013. The informal return to work date extension does not change the availability for work issue. The employer had been provided with a full medical release without restriction and that has not changed as of the date of this hearing.

**DECISION:**

The decision of the representative dated April 15, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on April 15, 2013. Claimant is able and available for work. Benefits are allowed, provided claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/tll