

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENG M AGUER**  
Claimant

**APPEAL NO. 09A-UI-17737-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO INC**  
Employer

**Original Claim: 10/11/09  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant, Deng Aguer, appealed an unemployment insurance decision dated November 18, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on January 5, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Rebecca Fischer participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time as a line cook for the employer from April 28, 2008, to October 7, 2009. The claimant was informed and understood that under the employer's work rules, employees were prohibited from bringing, possessing, or consuming alcoholic beverages on company property and were subject to termination on the first offense. The claimant had been sent home twice before when supervisors suspected he was under the influence of alcohol.

On October 7, 2009, the claimant willfully violated the alcohol policy. During his break, the claimant went to his car, consumed a 12-ounce beer in his car in the company parking lot, and then returned work. The claimant brought another beer into work and drank it in the restroom later that evening. A guest observed him drinking the beer in the restroom and reported it to management. Security personnel confronted the claimant about what had happened. He admitted to drinking the beer in the car on break, bringing the beer on company property, and drinking it in the rest room.

After a breathalyzer test disclosed the claimant was over the alcohol policy's concentration limit of .04 grams of alcohol per 210 liters of breath, he was removed from the company property. He was discharged in a letter dated October 12, 2009, for violating the employer's alcohol and drug-free workplace policy.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule regarding alcohol use on company policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant also was over the concentration limit of .04 under the employer's alcohol and drug-testing policy. Normally, this would trigger an inquiry as to whether the employer satisfied the requirements of the Iowa Drug and Alcohol Testing law—Iowa Code 730.5. But in this case, the evidence is clear that the claimant's discharge was primarily based on his bringing, possessing, and consuming alcohol on company property, which the claimant admitted. As a result, I do not believe the inquiry required by Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003) and Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999) is necessary. Alternatively, I would conclude the requirements of Iowa Code 730.5 have been substantially complied with in this case. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 18, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw