

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J BRUECK
Claimant

APPEAL NO: 14A-UI-03137-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE MEADOWS RACETRACK & CASINO
Employer

OC: 02/23/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Daniel J. Brueck (employer) appealed a representative's March 14, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Prairie Meadows Racetrack & Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2014. The claimant participated in the hearing. Michele Wilkie appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 19, 2006. He worked full time as a plumber on a Friday through Monday schedule. His last day of work was February 21, 2014. The employer sent him home on suspension that day and discharged him on February 28, 2014. The stated reason for the discharge was an incident of falsification of records after progressive discipline on other issues.

On Monday, February 17, 2014 the claimant was working his shift from 2:30 p.m. to 11:00 p.m. One of his duties was to check the pool water chemistry every two hours and to document this in a log. The employer was checking the claimant's time on another task that day and in doing so discovered that the claimant had documented pool water checks at about 4:00 p.m., 6:00 p.m., 8:00 p.m., and 10:00 p.m., but in fact the claimant had not been in the pool area or

checked the chemistry between 4:00 p.m. and 8:00 p.m. While the employer might have accepted the claimant documenting a 6:00 p.m. pool chemistry check that was somewhat delayed, it viewed the claimant's documenting a pool chemistry check that had been completely omitted and falsification.

The employer had previously given the claimant a three-day suspension on August 31, 2012 for an issue with pump inspections, and had given him a five-day suspension on July 26, 2013 for an incident regarding following codes for temporary drains. The July 2013 warning advised him that any additional incident would result in discharge under the employer's progressive discipline policy.

Because the employer considered the claimant's falsification of the log on February 17 to be an additional policy violation after the second suspension, as well as the seriousness of the incident itself, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's documenting doing a pool chemistry check that was not in fact done, particularly after being advised that additional policy violations could result in termination, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 14, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 21, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs