

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE LOPEZ ALFARO**

Claimant

**PRAIRIE MEADOWS RACETRACK &  
CASINO**

Employer

**APPEAL NO. 13A-UI-10151-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/13**

**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 30, 2013, reference 01, which held that Jose Lopez Alfaro (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 October 2, 2013. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Tracey Casey, Human Resources Generalist.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a dish machine operator from March 29, 2013 through August 1, 2013 when he was discharged due to an unsuccessful introductory or trial period. He was part-time and went full-time on May 12, 2013 so was on probation for 90 days and could not have more than four occurrences during this time. The employer discharged the claimant for attendance after issuing verbal warnings. The claimant missed work on April 3 and April 20, 2013 due to transportation problems. He failed to properly report the absences so received one and a half points for each day. The claimant was absent due to illness on July 13, 2013 but only received one point since he properly reported it and was late for work on July 28, 2013 for which he received an additional point because he did not report it in a timely manner.

**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 August 1, 2013 for failing to meet the employer's standards during a trial period of employment. Under such circumstances, an individual is not considered guilty of misconduct within the meaning of the law. 871 IAC 24.32(5). Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 30, 2013, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css