

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY MARKVICKA
Claimant

APPEAL NO: 15A-UI-07968-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

**OC: 06/21/15
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 10, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 13, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Tracey Casey, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time table games dealer for Prairie Meadows Racetrack & Casino from June 6, 2014 to June 22, 2015. She was discharged for a no-call no-show absence June 17, 2015.

The claimant's regularly scheduled days off were Tuesdays and Wednesdays. She was scheduled Wednesday, June 17, 2015, because the employer was short-staffed, but she failed to call or show up for work on that date. The employer implemented a new attendance policy in March 2015. Employees signed for the new policy which stated, in part, that one no-call no-show absence would result in termination of employment.

The claimant reported for work June 18, 2015, and the employer met with her to ask why she was a no-call no-show the previous day. The claimant explained she always checked the schedule but did not realize she was scheduled to work June 17, 2015, because that was usually her day off. The employer sent the claimant home pending further investigation by human resources. The employer notified the claimant June 22, 2015, that her employment was terminated due to the no-call no-show June 17, 2015. The claimant had not received any previous verbal or written warnings regarding her attendance since her rehire date of June 6, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did have one no-call no-show absence June 17, 2015, because she did not realize she was scheduled to work on what was typically her day off, she did not have any other documented unexcused absences or an excessive unexcused absenteeism record prior to June 17, 2015. Although not condoning the no-call no-show absence, the administrative law

judge must conclude one no-call no-show is an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 10, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs