

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL A STEWART
Claimant

APPEAL NO. 11A-UI-10152-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

**OC: 07-10-11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 29, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 25, 2011. The claimant did participate. The employer did participate through Pam Anderson, human resources recruiter.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cocktail server, full-time, beginning May 1, 2002, through July 12, 2011, when she was discharged. The claimant was required to keep track of her break time by accurately writing down when she left for break and when she returned. She owed her employer honesty in her dealings with them. On July 4 the claimant was observed by the surveillance system leaving for break and writing down on the time sheet that she left at 12:28 p.m. She arrived back at her work station at 12:50 p.m. but wrote down instead that she arrived back at 12:45 p.m. When she arrived back at her work station, she also altered the time sheet to indicate she had not left for break until 12:29 p.m. The claimant was observed on break during the entire period, she was not sidetracked assisting a customer. The claimant was to be on paid break for only 15 minutes; instead she was gone for 22 minutes and falsified her time sheet to cover up that she took a longer break than allowed. The employer's handbook, a copy of which had been given to the claimant, provides that even one occasion of falsification of time cards or company documents is grounds for immediate termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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(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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant falsified her time sheet to cover up that she took a longer paid break than allowed. Such falsification is theft of time from the employer and is sufficient grounds to disqualify her from receipt of unemployment insurance benefits.

DECISION:

The July 29, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw