

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD WILSON**  
Claimant

**APPEAL NO: 12A-UI-08235-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO**  
Employer

**OC: 06/17/12  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Prairie Meadows Racetrack and Casino (employer) appealed an unemployment insurance decision dated July 6, 2012, reference 01, which held that Richard Wilson (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 August 2, 2012. The claimant participated in the hearing. The employer participated through Tracey Casey, human resources generalist. 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:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2001 and he was most recently working as a full-time poker supervisor when he was discharged on June 14, 2012 due to violation of the attendance policy. Employees are discharged once they accumulate nine attendance points, but they can also be placed on probation at eight points. The attendance probation lasts 90 days and the employer is discharged if they have an absence or half an absence during that time.

The claimant received verbal warnings for attendance on August 20, 2011 and on March 19, 2012. He received a written warning on March 24, 2012 for seven absences which were all due to illness. The claimant was absent due to illness for four days ending March 27, 2012 and he was 90 minutes late for work on May 6, 2012. He thought he was scheduled at noon that day and arrived for work 15 minutes early for work but was actually scheduled at 10:00 a.m. The claimant had come in once a month at noon for the first four months of the year for a special poker tournament. He was scheduled at 10:00 a.m. each of these days but called in each time

and was told to come in at noon. The claimant assumed he would need to be there at noon on May 6, 2012 also, but failed to call in to check.

The claimant was placed on probation for attendance on May 7, 2012. The final absence occurred on June 10, 2012, when he was five minutes late for work and he reported to the poker room eight minutes late.

### **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.

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.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 14, 2012 for violation of the attendance policy. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. See 871 IAC 24.32(7).

Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's absences were due to properly reported illness except for the last two. The absence on May 6, 2012 was due to his reasonable belief that he was not scheduled to work until noon. Consequently, the termination was due to one unexcused absence which is not considered excessive unexcused absenteeism. See *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). 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 July 6, 2012, 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/kjw