

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M WATERSON

Claimant

APPEAL NO. 07A-UI-04464-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO INC**

Employer

**OC: 04/15/07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Prairie Meadows Racetrack & Casino, Inc. filed a timely appeal from an unemployment insurance decision dated April 30, 2007, reference 01, that allowed benefits to Dawn M. Waterson. After due notice was issued, a telephone hearing was held May 15, 2007 with Ms. Waterson participating. Employee Relations Manager Michele Wilkie participated for the employer.

ISSUE:

Was the claimant discharged for excessive unexcused absenteeism?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dawn M. Waterson was employed by Prairie Meadows Racetrack & Casino from April 17, 1997 until she was discharged April 11, 2007. She last worked as a casino floor attendant.

Ms. Waterson was absent for medical reasons on April 5, 2007. Company policy requires that employees notify the employer at least two hours prior to their shift. Ms. Waterson failed to do so because she overslept.

Ms. Waterson had been placed on probation for poor attendance on April 2, 2007. She had also failed to give the employer two hour's notice for absences due to illness on November 14 and December 21, 2006 and on March 19, 22 and 30, 2007. She had been tardy on January 18, 2007 and October 11, 2006. She had also left work early for personal reasons on October 18, 2006.

In addition to the probation, she had received written warnings for attendance on February 6 and March 19, 2007. Ms. Waterson has received unemployment insurance benefits since filing a claim effective April 15, 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness and other part-day absences, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). On the other hand, absence due to medical reasons is not held against an employee for unemployment insurance purposes, provided the employee has properly reported the absence to the employer. See 871 IAC 24.32(7).

The evidence in this record establishes six instances in which Ms. Waterson was absent due to illness but neglected to notify the employer as required. In addition she was tardy on two other occasions and left early for personal reasons on yet another. This number of occurrences, especially when viewed in light of repeated discipline, is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

Ms. Waterson has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated April 30, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,080.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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