

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARALEE STEVENSON**

Claimant

**PRAIRIE MEADOWS RACETRACK &  
CASINO**

Employer

**APPEAL NO: 13A-UI-08205-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/23/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 11, 2013, reference 01, that held the claimant was not discharged for misconduct on June 25, 2013, and benefits are allowed. A telephone hearing was held on August 19, 2013. The claimant participated. Tracey Casey, HR Generalist, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on February 28, 2005, and last worked for the employer as a full-time poker dealer driver on June 25, 2013. She received the employer policies in an employee handbook. The employer considers clocking-in and failing to report to the workstation at the designated start time a falsification of a document that is an employment termination offense. The employer believes that any employee should be able to report within a seven-minute window of clock-in time in order to be at the workstation by start time.

On June 20, 2013, claimant clocked in a 7:59 a.m. and knowing that 8:00 a.m. was her start time. Claimant was running late. She parked her car and re-entered the Casino about 8:03 a.m. and arrived at her workstation at 8:08 a.m. She relieved her manager on duty so he go to breakfast, but there was no customer available for a game.

The incident was reported to human resources and it reviewed security video to verify claimant's activity from arrival to the Casino to clocking in, parking her car, re-entering and arriving at her workstation. Claimant was sent home on June 20.

The employer discharged claimant on June 25 for falsifying her time record by clocking in at 7:59 a.m. but failing to arrive at her workstation until 8:08 a.m. Claimant states there is some

work flexibility as there are days she needs to be working at her start time due to customer demand, and others where she might wait around for customer traffic. She knew on June 20 she would not be required to deal at 8:00 a.m.

The employer representative in this hearing participated at department fact finding. The employer admits there are unique circumstances where an employee is not terminated for this offense.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 25, 2013.

Claimant was late for work on June 20. She failed to arrive at her workstation by her 8:00 a.m. start time. While these acts are some evidence of misconduct they are not so substantial as to constitute job disqualifying misconduct. Claimant had not been previously disciplined.

Claimant had some measure of work duty flexibility. The evidence does not support claimant intentionally falsified her start time record to be paid for work she did not perform but rather to avoid the appearance of being late to work. Claimant is not an employee like a factory assembly worker who needs to be at the workstation when the line starts-up.

Claimant was paid for being an available dealer when customer demand required her services that meant she would wait around for periods of time. She knew on June 20 there was no immediate demand for dealer service.

**DECISION:**

The department decision dated July 11, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on June 25, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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