

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEMI L LADO
Claimant

APPEAL NO: 11A-UI-03553-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

**OC: 02/06/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 11, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Pam Anderson, a human resource recruiter, appeared on the employer's behalf. Robert Dut Taiang interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2006. The claimant worked as a full-time housekeeper on the 11 p.m. to 7 a.m. shift. The employer's attendance policy informs employees they can be discharged if they accumulate nine attendance points in a year or if within 12 months they are placed on attendance probation two times. The employer can put an employee on attendance probation when they have accumulated eight attendance points. The claimant received a copy of the attendance policy when he was hired.

On July 11, 2010, the employer put the claimant on attendance probation. As of July 11, he had 11 absences. The claimant satisfactorily completed this probation on October 11, 2010.

A female relative from Omaha stayed with the claimant and his family for awhile after she had a fight with her husband. After the claimant's landlord told the claimant he would have to move if he continued to have too many people in his apartment, the claimant made arrangements to take off January 29, 2011, to take the female relative back to Omaha. Initially, the claimant understood the employer gave him permission to have this day off. The claimant's wife made arrangements to take off time from her job so she could take care of their children when the claimant went to Omaha on January 29.

The day before, January 28, the claimant learned the employer would not excuse his January 29 absence. The employer had an event and wanted all employees working shifts they usually worked. The claimant could not change the time he was to take his relative back to Omaha. He called the employer before his January 29 shift started at 11 p.m. to report he was unable to work because of personal reasons.

The morning of January 29, 2011, the claimant left for Omaha. It took the claimant longer than he anticipated to mediate the family dispute between his relatives. After they had resolved their differences, the claimant drove back to Iowa. The claimant drove in snow and did not get back home until just before 11 p.m. The claimant knew he could not get to work on time and stayed home. The claimant was not scheduled to work on January 30 or 31.

As a result of his January 29 absence not being excused, the claimant had eight attendance points and was again put on attendance probation. Since this was the second attendance probation the claimant had received in less a year, the employer discharged him on February 1, 2011, for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Between July 11, 2010, and January 29, 2011, the claimant did not accumulate any attendance points and his points during a rolling calendar year went from 11 to 7. Even though the claimant was not scheduled to work on January 30 and 31, he had made plans to go to Omaha on January 29 after the employer initially granted him this day off. The claimant's wife then took off work from her job on January 29 to take care of their children while the claimant was in Omaha. When the employer told the claimant he could not have time off on January 29, the claimant could not change the day he went to Omaha. Since the claimant had successfully completed his attendance probation on October 10, 2010, he understood the employer would not discharge him until he accumulated nine attendance points.

As a result of issues between his relatives and weather conditions, the claimant did not make it back to Iowa in time to report to work by 11 p.m. on January 29. Even if he had only been five minutes late, he still would have received one attendance point. The employer gave him one attendance point for his January 29 absence.

Based on the following facts, the claimant established reasonable grounds for being absent for his January 29 shift. The facts considered include the cultural importance that the claimant help or mediate issues to resolve problems between a husband and wife who were the claimant's relatives; the arrangements other people made when the claimant initially had approval to have January 29 off from work; the employer's late decision to deny the claimant's request for this day off; and the claimant did not have any attendance issues for over six months.

The employer established justifiable business reasons for discharging the claimant. The claimant did not commit work-connected misconduct. As of February 6, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 11, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 6, 2011, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs