

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA K OBRIEN**  
Claimant

**APPEAL NO. 12A-UI-14526-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK  
AND CASINO**  
Employer

**OC: 11/04/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Pamela O'Brien, filed an appeal from a decision dated December 3, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 23, 2013. The claimant participated on her own behalf and with Tanya Bates. The employer, Prairie Meadows, participated by Human Resources Generalist Pam Anderson.

**ISSUE:**

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

**FINDINGS OF FACT:**

Pamela O'Brien was employed by Prairie Meadows from October 24, 2005 until November 2, 2012 as a full-time valet attendant. During the course of her employment she received four or five disciplinary actions for inappropriate behavior. She tended to "act out," swearing and flinging her arms about, raising her voice and angrily expressing her displeasure about one thing or another. The last warning was given in 2008. All of the warnings notified her discharge could occur for any future incidents.

On October 25, 2012, the claimant engaged in an angry display by the traffic shack. A customer had called for their car which she had parked. When she found someone else had taken the keys and the car up to the front door, she threw her hat in the air where it struck a nearby car. She used profanity, flung her arms about and raised her voice to the extent the supervisor heard her from some distance away and came over to investigate.

The supervisor took her to the office inside the casino where she was interviewed by the head of security. The claimant admitted her behavior and was sent home on suspension pending investigation. The investigation consisted of getting written statements from five witnesses to the event. All of them agreed as to the particulars of the event.

The employer's investigation concluded and the decision was made to discharge. She was notified of the discharge on November 2, 2012.

**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 claimant had been advised her job was in jeopardy as a result of her inappropriate behavior. Whatever her concerns were about someone else taking up a customer's car, her response was unprofessional, inconsiderate and inappropriate. The event occurred in the parking lot which is fully accessible by customers and her behavior could have been witnessed by any of the people parking their own cars in that area.

The image of a valet attendant swearing, flinging her arms about and throwing her hat in the air is not the type of image the employer would want to promote to the public and patrons. The claimant jeopardized the employer's image in the community and created a hostile work environment for her co-workers. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of December 3, 2012, reference 01, is affirmed. Pamela O'Brien is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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