

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH A WILLIAMS
Claimant

APPEAL NO. 13A-UI-13151-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
AND CASINO**
Employer

**OC: 10/27/13
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Sarah Williams, filed an appeal from a decision dated November 18, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2013. The claimant participated on her own behalf. 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:

Sarah Williams was employed by Prairie Meadows from February 28, 2005 until November 1, 2013 as a full-time table games dealer. She had received the employer's updated attendance and progressive disciplinary policy in October 2009. Any employee who reaches nine attendance points is subject to discharge. When eight points are accumulated a 90-day attendance probation is issued. Any employee who received two such probations in a 12-month period is subject to discharge.

Ms. Williams was issued a 90-day probation on June 6, 2013, which she successfully completed. On October 26, 2013, she was late for work due to being pulled over by a law enforcement officer. She had not paid for the new registration for her vehicle and had an expired tag on her plate. This tardy resulted in an attendance point which put her at a level for another 90-day probation. Under the attendance policy she was discharged.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

The claimant had been advised her job was in jeopardy as a result of her attendance points. The final incident was a tardy due to being pulled over by a law enforcement officer. This was not a random stop but due to Ms. Williams not having a current tag on her license. Matters of purely personal consideration, such as transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant would not have been pulled over, and subsequently late to work, if she had kept her license tags current. This cannot be considered an excused absence.

Sarah Williams was fired for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The unemployment insurance decision dated November 18, 2013, reference 01, is affirmed. Sarah Williams is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css