

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH H TORNQUIST**  
Claimant

**APPEAL NO: 11A-UI-02721-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK & CASINO**  
Employer

**OC: 01/30/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Prairie Meadows Racetrack & Casino (employer) appealed a representative's March 2, 2011 decision (reference 01) that concluded Elizabeth H. Tornquist (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2011. The claimant participated in the hearing. Rebecca Fisher appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 7, 1997. She worked full time as a line cook. Her last day of work was January 26, 2011. The employer suspended her that day, and discharged her on January 28, 2011. The reason asserted for the discharge was unsatisfactory service.

The claimant had received a warning on August 13, 2008 regarding a conflict with a coworker. On September 18, 2009 she had been given a warning for unsatisfactory job performance. On July 29, 2010 she had been given a warning with a three-day suspension for serving cold food and eating food off of the line.

The final incident which led to the discharge was that on January 23 the employer asserted the claimant had left early without permission and had not accurately reported her breaks. The claimant was scheduled to work until 3:30 p.m. She had not taken her break earlier in the day, and it was not uncommon for her to take her break at the end of her shift. The claimant finished her work duties and left for her break. She recorded that her break was at 3:15 p.m. She then clocked out at 3:24 p.m. and left. The employer asserted that according to the surveillance time system she had actually left for her break at 3:08 p.m. and should have returned from her break

prior to clocking out. The claimant indicated she had used the time as shown on her watch which she had coordinated with the time clock.

Because of this time issue on January 23 after the prior disciplines, the employer discharged the claimant. There had not been any prior disciplines regarding time issues.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the time issue on January 23, 2011. Under the circumstances of this case, the claimant's timing of her break and then leaving was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not established that the claimant intentionally falsified her time. Huntoon, supra. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's March 2, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs