

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA M FREEMAN**  
Claimant

**APPEAL NO: 11A-UI-11357-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS  
RACETRACK & CASINO**  
Employer

**OC: 07/24/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 15, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Rebecca Fischer, a human resource recruiter, appeared on the employer's behalf. 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 2000. At the time of her employment separation, the claimant worked as a full-time casino floor attendant. The claimant knew and understood the employer did not allow employees to use profanity on the casino floor. The claimant also knew the employer could discharge an employee for using profanity in the presence of customers.

On July 17, 2011, the claimant was upset after a supervisor accused her of leaving slot paper on a chair when she had not done this. In December 2010, the claimant received a one-day suspension for leaving slot paper on a chair in the casino.

On July 17 when the claimant got to the area of the casino where the slot pauper was left, she understood a second supervisor also accused her claimant of leaving the paper on the chair. Since the claimant was already upset because she had been accused of something she did not do, the claimant lost her composure and starting crying. The claimant loudly said, "No, I did not freaking do this." Crying the claimant denied she left the paper on the chair. When customers were walking toward the claimant saw and heard what was happening they turned around and walked away from the scene. The claimant was so emotionally upset; she went off the floor in

an attempt to compose herself. The claimant returned to work, but left work early because the incident that morning upset her a great deal.

Employees operating the surveillance camera noticed how the customers reacted to the scene. The employer investigated and two of the four employees who were present, told the employer the claimant said, "Fucking." One employee did not hear the claimant use profanity. The employer did not talk to the fourth employee who witnessed the situation.

On July 20, the employer talked to the claimant and asked what the claimant had said. The claimant told the employer she said, "freaking." Based on the reaction the customers had as picked up on the surveillance camera and the report of two employees, the employer discharged the claimant on July 22 for using profanity in the presence of customers. One of the employees, who reported the claimant swore, did not get along with the claimant. She had recently been talked to about the way she talked to or treated the claimant. The employer did not tell the claimant who the second employee was that said she used profanity.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's investigation in July, the employer established a business reason for discharging the claimant. The employer did not have any witnesses involved at the July 17 incident testify at the October 5 hearing. The employer's witness relied on reports from others or hearsay information. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing.

Even though a surveillance camera picked up the reaction of customers, they could have reacted to the claimant's crying or emotional state instead of any profanity they may have heard. The customers' reaction does not establish that the claimant used profanity on the casino floor. Even though two employees reported the claimant used profanity on the casino floor, at least one employee had a motive for exaggerating what the claimant said. Since the other employee was not identified, the claimant has no way of knowing if the other employee has any motive for providing inaccurate information. Based on the credible evidence presented during the

October 5 hearing, the claimant did not use profanity on the casino floor on July 17. Therefore, while the employer had business reasons for discharging her because she became very emotional on the casino floor, the claimant did not commit work-connected misconduct. As of July 24, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 15, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 24, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css