

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEOFFREY L FORNEY
Claimant

APPEAL NO. 08A-UI-03164-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO INC**
Employer

**OC: 03/09/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Geoffrey L. Forney filed a timely appeal from an unemployment insurance decision dated March 28, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on April 22, 2008 with Employee Relations Manager Michele Wilkie participating for the employer, Prairie Meadows Racetrack & Casino. Mr. Forney did not respond when paged at the time of the hearing and again prior to the closing of the record.

ISSUE:

Is the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Geoffrey L. Forney was employed by Prairie Meadows Racetrack & Casino, Inc. from April 9, 2007 until he was discharged March 3, 2008. He last worked full time as a table games dealer.

Mr. Forney was absent for medical reasons on February 23 and 24, 2008. On both occasions he contacted the employer less than two hours before the beginning of his shift. The employer requires two hours of notice in order to be able to call in replacement staff. Mr. Forney was also absent for what he termed a family emergency on July 19, 20, 21, and 25, 2007. He provided no information to the employer as to the nature of the family emergency. He was also absent without contact on June 18, 2007. He was placed on probation for poor attendance on July 24, 2007. At the time he was advised that further attendance violations could lead to his discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence to medical conditions may be excused, however, provided the employee properly notifies the employer of the impending absence. See 871 IAC 24.32(7). Mr. Forney did not testify and thus provided no information to indicate a valid reason for his late contacts on February 23 and 24. The administrative law judge concludes that those absences must be considered unexcused. When viewed in the context of prior unexcused absences and discipline the evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 28, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs