

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA BRANIGER
Claimant

APPEAL NO. 09A-UI-09652-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO INC**
Employer

**Original Claim: 05/31/09
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Jessica Braniger (claimant) appealed an unemployment insurance decision dated July 1, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Prairie Meadows Racetrack and Casino, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2009. The claimant participated in the hearing. The employer participated through Tracey Casey, Human Resources Generalist, while Recruiter Pam Anderson was present but did not participate. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time table games dealer from January 31, 2005 through June 4, 2009, when she was discharged for unsatisfactory service under the progressive discipline policy. The final incident occurred when the claimant parked in a restricted parking lot on May 28, 2009. She received a written coaching on May 20, 2009 for the same policy violation.

Prior to that, the claimant's last disciplinary action occurred on November 14, 2008, when she was suspended for five days for missed punches with the time clock. The employer said she was coached about it on October 19, 2008, but the claimant disputes that claim. The employer suspended the claimant for three days on August 8, 2008 for failing to follow correct procedures while assigned to craps. She was issued a written warning on May 21, 2008 for discussing a variance in an employee break room. There were no disciplinary warnings in 2007, but there were some issues in 2005 and 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 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 substantial and 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).

The employer's witness testified the claimant was discharged on June 4, 2009 for unsatisfactory service under the progressive discipline policy. The final incident and the only other incident in 2009 occurred as a result of the claimant parking in the wrong parking lot. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v.

Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. While the claimant may have shown a lack of good judgment, her actions are not serious enough to warrant disqualification. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The unemployment insurance decision dated July 1, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw