

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVA M JOHNSON

Claimant

APPEAL NO: 14A-UI-02869-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 02/23/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 13, 2014, reference 01, that held the claimant was not discharged for misconduct on February 21, 2014, and benefits are allowed. A telephone hearing was held on April 8, 2014. The claimant did not participate. Pam Anderson, HR Generalist, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 2, 2007, and last worked for the employer as a full-time main line cook on February 19, 2014. The employer most recently disciplined claimant with a five-day suspension on April 19, 2013 for a job performance issue.

The employer has a buffet it provides to Casino customers. Claimant is responsible for a designated section to prepare, cook and serve food. On February 19 claimant burned bacon, prepared greasy hash browns and served it on the buffet. The employer terminated claimant for unsatisfactory food service for the recent incident in light of the prior discipline.

Claimant called in after the close of the record at 9:34 a.m. She failed to read and follow the hearing notice instructions to call prior to the hearing. There is no pre-hearing number from claimant on the UI Appeals C2T control system.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The administrative law judge concludes claimant's failure to read and follow the hearing notice instructions is not good cause to reopen the record and schedule a new hearing.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on February 21, 2014.

The recent food service incident occurred ten months after her disciplinary suspension. The employer did not offer a witness with first-hand knowledge about the bacon and hash browns and what could have caused an issue with this food. Job disqualifying misconduct is not established.

DECISION:

The department decision dated March 13, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct on February 21, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css