

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BIEL C DENG

Claimant

APPEAL NO: 13A-UI-06455-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 05/05/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 22, 2013, reference 01, that held he was discharged for misconduct on May 7, 2013, and benefits are denied. A telephone hearing was held on July 8, 2013. The claimant, and Attorney, Lori Holm, participated. Tracy Casey, 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 began employment on November 6, 2000, and last worked for the employer as a full-time casino floor attendant on May 7, 2013. The employer discharged claimant for falsification of a document policy (call-in log).

Claimant had been approved for FMLA when needed. On April 19, 2013 claimant called an employer representative at 2:46 a.m. stating he would be absent from scheduled work that day (8:00 a.m. to 4:30 p.m.). He stated that reason for his absence was FMLA for his daughter.

The employer security learned claimant had been arrested for OWI. An Iowa Court on-line record showed he was stopped at 1:27 a.m. and arrested at 1:44 a.m. by Altoona law enforcement. He was incarcerated at the time he called the employer at 2:46 a.m. and he was not released until 5:48 p.m.

The employer confronted claimant on April 22 about his reason for absence from work. He stood by the reason as FMLA for his daughter and the employer gave him until April 29 to provide a doctor's note. He provided a doctor's note that his daughter had an appointment on April 19.

The employer did not believe claimant missed work on April 19 due to FMLA for his daughter. Claimant told the employer he was taking his daughter to the hospital, but the doctor note made reference to an appointment. The employer discharged claimant on May 7 for falsifying the call-in log reason for absence.

REASONING AND CONCLUSIONS OF LAW:

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 employer has established claimant was discharged for misconduct in connection with employment on May 7, 2013.

The employer terminated claimant for falsification of a reason for absence that it relates to a policy violation. While claimant did not sign a document for the absence reason, the information was taken by an employer representative who recorded it. Claimant was given an opportunity to recant his absence reason, but the fact remains he was incarcerated when he called in his absence without a reasonable expectation his missing work would be for his daughter's FMLA health issue. Claimant was incarcerated during the duration of his April 19 work-shift and he failed to take the opportunity given by the employer to change the reason for his absence that constitutes job disqualifying misconduct.

DECISION:

The department decision dated May 22, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on May 7, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs