

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY D YEAGER
Claimant

APPEAL NO: 12A-UI-04869-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS
RACETRACK & CASINO**
Employer

OC: 04/01/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 24, 2012 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 appeared for the June 27 in-person hearing. The employer informed the Appeals Section before the hearing that no one on the employer's behalf would appear for the hearing. Based on the evidence, the claimant's arguments, 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 January 2007. The claimant worked full time at the table games.

During her employment, the employer talked to the claimant when she did not punch in on September 13 and early October 2011. The employer started progressive discipline in early October 2011 by giving the claimant a verbal warning for failing to punch in on the time clock. The claimant received a five-day suspension on January 29, 2012, when she violated a policy. The claimant made a correction herself instead of contacting a floor manager. The claimant understood her job was in jeopardy after she received the suspension. The claimant knew she could not have any other infractions during the next year.

On March 27, 2012, the claimant reported to work without her apron. The claimant borrowed an apron from a co-worker who had just finished working. Since the co-worker's apron was extra large and the claimant's apron was a small, she was busy trying to get the co-worker's apron to look acceptable before she went to work. While she was doing this, employees were called to get their assigned tables for the shift. After the claimant received her assignment, she went to her assigned table and forgot to punch out. When the claimant punched out at the end of her

shift, she did not realize she had not punched in. The claimant was next scheduled to work on March 31. She then learned she had not punched in for work on March 27. The employer then suspended her without pay. On April 4, 2012, the employer discharged the claimant for violating the employer's punch in policy when she was on the last step of the employer's progressive discipline policy.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the employer's progressive disciplinary policy, the employer had justifiable business reasons for discharging the claimant when she forgot to punch in on March 27, 2012. Even though the claimant received a verbal warning in early October 2011 for failing to follow the employer's punch in and out policy, she did not have any problems following this policy again until March 27, 2012. On March 27, the claimant became preoccupied in putting on an extra large apron because she forgot hers. As a result of her preoccupation, she forgot to punch in after she received her table assignment. The evidence does not establish that the claimant intentionally violated the punch-in policy. She inadvertently forgot to punch in on March 27. The claimant did not commit a current act of work-connected misconduct. As of April 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 24, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit a current act of work-connected misconduct. As of April 1, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs