

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY S LEETE**

Claimant

**APPEAL NO. 14A-UI-03153-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**

Employer

**OC: 02/23/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tammy Leete (claimant) appealed a representative's March 18, 2014, decision (reference 01) that concluded March 18, 2014, was not eligible to receive unemployment insurance benefits because she was discharged from work with Prairie Meadows Racetrack & Casino (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for April 22, 2014, in Des Moines, Iowa. The claimant participated personally. The employer participated by Pam Anderson, Human Resource Generalist, and Eric Nelson, Assistant Chief of Security Operations. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 15, 2013, as a full-time security officer. The claimant signed for receipt of the employer's handbook. On August 23 and September 8, 2013, the employer issued the claimant warnings for failure to use the time clock properly. On November 15, 2013, the employer issued the claimant a verbal warning for accumulating attendance points. Each time the employer notified the claimant that further infractions could result in termination from employment.

The employer's policy is to check the identification of any person who appears to be 40 years old or younger who wants to enter the gaming floor. The identification is placed into a machine. The machine checks the age of the customers. If a minor is detected, the employee is to keep the identification card, detain the minor, call for surveillance on her radio, and hand the minor over to security.

On February 15, 2014, the claimant was checking identification at a doorway to the gaming floor. A male approached the doorway. The identification machine identified the male as a

minor. The claimant handed the minor his identification card and asked him to stay by the podium. The claimant was distracted by other customers for a few seconds and realized the minor walked a few steps onto the gaming floor. She retrieved the minor and asked him to remain in front of the podium. He started to walk away again and she repeated her request to the minor. The claimant called for surveillance on her radio and handed the minor male over to security.

The claimant completed a statement after the incident and the employer observed the surveillance video of the incident. The employer could not see the claimant tell the minor male to stay by the podium. Due to the camera angle the claimant's face was behind the minor's head for a few seconds during the surveillance recording. The employer terminated the claimant because the employer believed the claimant falsified her statement when she said she told the minor to stand by the podium.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The employer did not provide sufficient evidence of job-related misconduct. The employer admitted at the hearing the claimant's head was obscured for a period of time and the instruction to stand by the podium could have taken place during this time. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 18, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs