

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CONNIE L BUCKLIN
6805 HIGH ST
MINGO IA 50168-8619**

**PRAIRIE MEADOWS RACETRACK &
CASINO INC
PO BOX 1000
ALTOONA IA 50009-1000**

**Appeal Number: 06A-UI-04559-CT
OC: 04/02/06 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Connie Bucklin filed an appeal from a representative's decision dated April 25, 2006, reference 01, which denied benefits based on her separation from Prairie Meadows Racetrack & Casino. After due notice was issued, a hearing was held by telephone on May 15, 2006. Ms. Bucklin participated personally and offered additional testimony from Linda Geisenhoff. The employer participated by Gina Vitiritto-Robinson, Employment Relations Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bucklin was employed by Prairie Meadows from

July 6, 1999 until April 7, 2006 as a full-time casino operations clerk. She was discharged because she violated a final warning. On July 29, 2005, another employee, Terry Hayden, was to give a presentation to a group that included Ms. Bucklin. She made disparaging remarks about Ms. Bucklin, such as "you can't do anything right." The supervisor had to twice warn Ms. Hayden to stop making such comments. Ms. Bucklin did not argue with her but did state, "looks like this meeting is over for me." As a result of the incident, Ms. Bucklin was given a final warning. She had received a prior warning on February 9, 2005 because she breached confidentiality. One of her duties was to keep track of attendance. When some employees were making negative comments regarding the attendance of another, she told them the individual was absent due to a death in the family.

The final incident that caused the discharge occurred on March 26, 2006. Ms. Bucklin had corrected an attendance report done by Ms. Hayden. She alerted supervisors that Ms. Hayden was probably going to be confrontational over the fact that her work had been corrected. When Ms. Hayden returned to work on March 26, she approached Ms. Bucklin to question why she made the correction. Ms. Bucklin asked her not to snap at her and at some point, got up and went to the poker room. She did not notify a supervisor at that time that there was any problem. When she returned to her desk, Ms. Hayden continued to question her and discuss the correction. Ms. Bucklin told her she needed to change her tone of voice. As a result of the verbal altercation, Ms. Bucklin was discharged. Ms. Hayden was disciplined but not discharged as she was at a different level in the progressive discipline system.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bucklin was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Bucklin received a warning in February of 2005 because she told others that a coworker was absent due to a death in the family. Although this may have been a technical breach of confidentiality, she did not divulge any personal or private information. Deaths are a matter of public record. Ms. Bucklin did not provide any information that could not, no doubt, be found in the local newspaper. The evidence failed to establish that Ms. Bucklin engaged in misconduct in regard to the warning in July of 2005. She was being verbally attacked by Ms. Hayden concerning her job performance. Ms. Hayden was not in a supervisory role in relation to Ms. Bucklin's work. Ms. Bucklin did not argue back with her.

The evidence likewise failed to establish any misconduct on Ms. Bucklin's part on March 26, 2006. She had alerted management of a possible problem prior to the incident. The evidence failed to establish that she was yelling or making any inappropriate statements during the exchange with Ms. Hayden. At most, she may have used poor judgment in not contacting a supervisor on March 26 when the incident occurred rather than having any conversation with Ms. Hayden on the issue. Ms. Bucklin's isolated instance of poor judgment on March 26 is not sufficient to establish a substantial disregard for the employer's interests or standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated April 25, 2006, reference 01, is hereby reversed. Ms. Bucklin was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs