

**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**

**CHAD M WAGEMAN  
112 – 5<sup>TH</sup> AVE #A  
COUNCIL BLUFFS IA 51501**

**HARVEYS IOWA MANAGEMENT CO INC  
HARRAHS COUNCIL BLUFFS CASINO  
1 HARVEYS BLVD  
COUNCIL BLUFFS IA 51501**

**Appeal Number: 05A-UI-00253-DWT  
OC: 12/12/04 R: 01  
Claimant: Respondent (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Harveys Iowa Management Company, Inc. (employer) appealed a representative's January 3, 2005 decision (reference 01) that concluded Chad M. Wageman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2005. The claimant participated in the hearing. Tonya Achenbach and Steve Devney appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on April 24, 1996. The claimant worked in a dual-rate position in the games department. The claimant received a copy of the employer's written attendance policy. The policy informed employees they would be discharged if they accumulated 10 attendance points in any 12-month period.

On November 30, 2004, the claimant received a written warning for accumulating six attendance points. The claimant had been sick on November 23 for the sixth attendance point. On December 7, 2004, the claimant was scheduled to work as a supervisor at 10:30 p.m. When the claimant went to start his car and go to work, his car would not start. The claimant had just moved into a new apartment and did not have a phone. The person who lived next to the claimant was not at home. The claimant lived in a residential area and did not know where he could go to use a public phone. The claimant did not go to work or contact the employer for his December 7-8 shift.

The employer's attendance policy accesses four attendance points for every no-call/no-show incident. When the claimant went to work on December 8, 2004, the employer discharged him for violating the employer's policy because he accumulated ten attendance points within a year.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer followed its attendance policy and established business reasons for discharging the claimant. The evidence indicates the December 7 no-call/no-show incident was the first time the claimant had not called the employer when he was unable to work as scheduled. Even though the claimant did not call the employer when he was scheduled to work as a supervisor,

he did not intentionally and substantially disregard the employer's interests. Unfortunately, the claimant's car would not start, he did not have phone because he had just moved, he did not know anyone in the neighborhood to use their phone around 10:00 p.m. at night and the claimant did not know of any local public phone he could use. Under these unique facts, the claimant did not commit a current act of work-connected misconduct the evening of December 7, 2004. Therefore, the claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's January 3, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of December 12, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc