

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

NATHAN L HINES  
308 – 29<sup>TH</sup> ST DR SE APT 205  
CEDAR RAPIDS IA 52403

G M R I INC  
c/o JON-JAY ASSOCIATES INC  
PO BOX 6170  
PEABODY MA 01961

Appeal Number: 05A-UI-02840-H2T  
OC: 02-06-05 R: 03  
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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 8, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 5, 2005. The claimant did participate. The employer did participate through Becky Schwartz, Culinary Manager. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a line cook part time beginning July 16, 2003 through February 7, 2005 when he was discharged. On February 7, 2005 the claimant did not show up for his shift

at 5:00 p.m. He was scheduled to work until 9:00 p.m. The claimant called at 10:25 a.m. that morning to indicate that he would not be at work because he had a parent/teacher conference that evening. The claimant had not previously asked for the evening of February 7, 2005 off work for vacation. The claimant was never guaranteed any particular schedule nor was he ever guaranteed every Monday off work. The claimant first asked for February 7, off on February 4, although he knew about the parent teacher conferences on February 2, the day prior to the schedule being made up. The final absence occurred on February 7, 2005 when the claimant failed to show up for his scheduled work shift. He had no other instances of absenteeism or warnings.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The claimant did not have permission to miss work on February 7 and had he engaged in better planning he could have secured the time off in an approved manner. However, a failure to report to work without notification to the employer is considered an unexcused absence. One unexcused absence without prior warning or a history of other absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The March 8, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/pjs