

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**GOLEA E MCADAMS**  
Claimant

**R C CASINO LLC**  
Employer

**APPEAL 15A-UI-06331-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/10/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 26, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2015. The claimant participated. Two attempts were made to reach claimant witness, Brittany Jones, but she was unavailable when called. The employer participated through Jason True, Director of Human Resources. Employer Exhibits One through Six were admitted.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a food server and was separated from employment on April 30, 2015, when she was discharged for excessive attendance violations.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points in a rolling twelve-month period. The claimant was made aware of the employer's policy at the time of hire (Employer Exhibit One).

The final incident occurred when the claimant was tardy on April 29, 2015 to her shift. The claimant was tardy due to transportation issues. The claimant's ride was delayed so she began walking to work, and was picked up en route, but still late.

The claimant was last warned on March 19, 2015, that she faced termination from employment upon another incident of unexcused absenteeism (Employer Exhibit Two). The claimant was also issued written warnings for her attendance infractions on December 29, 2014, (Employer Exhibit Three), September 22, 2014 (Employer Exhibit Four) August 15, 2014 (Employer Exhibit

Five) and June 22, 2014 (Employer Exhibit Six). The claimant testified most of her attendance infractions were tardies, and several, including the final tardy, due to transportation issues.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. Cognizant of the claimant's ongoing transportation issues, she was aware her job was in jeopardy, and required to make the necessary arrangements to be at work on time. The employer has credibly established that the claimant was warned that further unexcused absences could result in termination of employment and the final tardy on April 29, 2015 was not excused. The final tardy, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The May 26, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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