

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG E VARNER
Claimant

APPEAL NO. 11A-UI-00676-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CASINO & RESORT
Employer

**OC: 12/19/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Craig Varner, filed an appeal from a decision dated January 13, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 24, 2011. The claimant participated on his own behalf. The employer, Wild Rose Casino, participated by Human Resources Generalist Chris Schneider, Facilities Manager Reg White, Engineering Manager Tom Traver and Facilities Coordinator Ben Fenzel.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Craig Varner was employed by Wild Rose Casino from July 26, 1994 until December 22, 2010 as a full-time maintenance technician. He had received numerous warnings regarding his attendance according to the progressive disciplinary policy. Final written warnings are given at six points and discharge occurs at seven points. Points drop off after one year.

Mr. Varner got final written warnings on September 2, November 5 and November 22, 2010, when he was fluctuating around the six point total. He did have medical problems and any tardiness or absences excused by a doctor's note was not counted against him.

On December 22, 2010, he was scheduled to begin work at 8:00 a.m. At 8:18 a.m. he called Facilities Manager Reg White to say he would be late. Mr. White told him not to come in because he was going to have to consult with General Manager Tim Bollmann and review the claimant's point total. The last warning had been given at 6.5 points and the tardiness on December 22, 2010, put Mr. Varner at seven points. The claimant had overslept again and Mr. White and Mr. Bollmann agreed that discharge should occur.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism and tardiness. The final occurrence was a tardy reported after his start time due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of January 13, 2011, reference 01, is affirmed. Craig Varner is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs