

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HENRY R GOODMAN
Claimant

APPEAL NO. 11A-UI-06514-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WINNEBAGO TRIBE OF NEBRASKA
WINNAVEGAS**
Employer

**OC: 04/17/11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 9, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 14, 2011. Claimant participated. Employer participated through Cindy Coleman.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a housekeeper/porter and was separated from employment on April 2, 2011. He was a no-call/no-show on April 1, 2011. He called in after 3:00 a.m. for the April 1 2:00 a.m. to 10:00 a.m. shift to report he was detained in jail and would not be able to report to work that day. He reported to work on April 2 and was fired. The employer's policy dating back to 2005, prior to the claimant's hire date in 2010, requires reporting absences two hours before and one hour after the shift start time or the absence will be considered a no-call/no-show. He had previous no call-no show absences on December 20 and November 12, 2010. On December 20, 2010 his van broke down and he did not have a cell phone. He walked about six miles and by the time when he called it was three hours into the shift. He overslept on November 12, 2010 and missed work.

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.

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was aware of the employer's attendance policy with respect to no-call/no-show absenteeism. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The May 9, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css