

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINA M ROTENBURGER**  
Claimant

**APPEAL NO. 11A-UI-00847-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

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

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated January 12, 2011, reference 01, that held the claimant was discharged for excessive unexcused absenteeism on December 13, 2010, and that denied benefits. A hearing was held on February 23, 2011. The claimant participated. Trisha Semelroth, HR Business Partner, and Larry Unger, Executive Chef, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began work on December 31, 2007, and last worked as a full-time cook on December 13, 2010. The claimant received the employer attendance policy, which provides for discipline due to violations. The employer awards points for violations. Ten points within a rolling one-year period may result in termination.

The employer issued claimant a final warning on May 2, 2010 for accumulating nine and one-half points. The claimant incurred eleven points for attendance policy violations (absences) from August 20 to November 30, which brought her to 13 points due to some offset based on the rolling calendar year. Claimant was scheduled to work on Sunday, December 12, but she called in an absence, as her car would not start. While there was an adverse weather condition, the claimant stated she would have gone into to work if her car had started. The claimant expressed surprise that she had not been terminated at an earlier time when she incurred ten points.

**REASONING AND CONCLUSIONS OF LAW:**

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer established misconduct in the discharge of the claimant on December 13, 2010, for excessive "unexcused" absenteeism.

The employer issued claimant a final warning in May that she was near the attendance point threshold for discharge. The claimant showed a disregard for the employer's attendance policy in this by questioning why she was not discharged at ten points rather than waiting until she was at 15. While the rolling period caused some occurrences to drop, she had so many absences that she was at thirteen points by November 30. The failure to report to work due to a transportation problem on December 12 is not excusable, and the recent incident in light of the final warning and numerous absences constitutes job-disqualifying misconduct.

**DECISION:**

The decision of the representative dated January 12, 2011, reference 01, is affirmed. The claimant was discharged for misconduct due to excessive unexcused absenteeism on December 13, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw