

**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**

**LARRY MILES
600 SPRUCE
BURLINGTON IA 52601**

**CATFISH BEND CASINOS LC
PO BOX 471
FORT MADISON IA 52627-0471**

**Appeal Number: 04A-UI-09381-ET
OC: 08-08-04 R: 04
Claimant: Appellant (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 25, 2004. The claimant participated in the hearing. Steve Morley, Human Resources Director, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dealer for Catfish Bend Casinos from May 23, 2002 to August 10, 2004. The claimant's wife called in to report he was ill and would not be at work August 5, 2004. He was not scheduled August 6 or 7, 2004, and did not call or show up for work August 8 and 9, 2004, and the employer terminated his employment August 10, 2004. The employer uses a point-based attendance policy. The claimant received a warning April 7, 2004, after accumulating 5.5 points, a warning April 20, 2004, after accumulating 7.5 points and a warning July 15, 2004, after accumulating 8.75 points. The claimant testified the employer told him in June 2004, that he could not miss any more work until some of his points dropped off and consequently he assumed his employment was terminated following his August 5, 2004, absence. The employer had prepared a counseling notice August 6, 2004, and planned to give the claimant another chance because he was well regarded by customers as well as the employer but the claimant did not contact the employer after August 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer. Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). The claimant's wife called in August 5, 2004, to report he was ill and would not be at work and the claimant assumed at that time his employment would be terminated for exceeding the allowed number of attendance points. The claimant had accumulated more than 10 points but the employer had decided to give him another warning and allow him to continue his employment but the claimant was a no-call/no-show August 8 and 9, 2004, and did not return to his job after calling in August 5, 2004. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. IDJS, (Unpublished, Iowa App. 1984). While it is unfortunate that the claimant did not contact the employer after his absence August 5, 2004, because he would have learned of the employer's decision to continue his employment, it was not the employer's responsibility to track him down and notify him that he still had a job and the claimant's failure to call or show up for work August 8 and 9, 2004, constitutes a voluntary leaving of his employment. Consequently, benefits must be denied.

DECISION:

The August 27, 2004, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. 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.

je/tjc