

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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TODD HARMEL

Claimant,

and

RIVERSIDE CASINO AND GOLF :  
RESORT :

Employer.

HEARING NUMBER: 09B-UI-04118

EMPLOYMENT APPEAL BOARD  
DECISION

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held April 9, 2009. The administrative law judge's decision was issued the same day indicating that the claimant, Todd Harmel, worked for Riverside Casino and Gold Resort from January 18, 2008 through February 8, 2009 as a part-time dealer. The employer has a no-fault attendance policy, i.e., an employee accumulating ten attendance points will be discharged. Mr. Harmel received progressive discipline at each step in the point system that required a given warning. He missed work for various reasons, some of which involved child care issues. By February 6, 2009, the claimant acquired twelve points for which he was terminated.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.



The only reason proffered for the claimant's last couple of absences was due to his having to return his child to his mother who was out of town. There is no evidence as to the nature of the absences that caused his initial accumulation of points for which those last absences pushed him beyond the 10-point limit. An employer's 'no fault' attendance policy is not dispositive of the issue of entitlement for unemployment insurance benefits. The court in Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) initially remanded that case back to the agency for a determination of whether the claimant's absences were excused or unexcused. The court went on to opine that absences due to illness, which are properly reported, are excused and not misconduct. Here, the employer made no such distinction between the claimant's absences. Thus, we are at a loss to render a decision in this matter based on this record as it stands. For this reason, we shall remand this case for further development of this record. See, Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996).

**DECISION:**

The decision of the administrative law judge dated January 30, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision. The administrative law judge shall reopen this matter and obtain additional evidence as to the nature of the claimant's absences. The administrative law judge shall then issue a new decision in light of the additional evidence, which provides the parties appeal rights.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

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