

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY C RUSSELL
Claimant

APPEAL NO. 11A-UI-02134-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO & GOLF RESORT
Employer

**OC: 12/05/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anthony Russell filed an appeal from a representative's decision dated February 15, 2011, reference 01, which denied benefits based on his separation from Riverside Casino & Golf Resort (Riverside). After due notice was issued, a hearing was held by telephone on March 22, 2011. Mr. Russell participated personally. The employer participated by Trisha Semelroth, Human Resources Business Partner, and Brian Goodman, Table Games Pit Manager. Exhibits 1 through 12 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Russell was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Russell was employed by Riverside from August 15, 2006 until November 30, 2010. He was last employed full time as a dealer and supervisor. He was discharged because of his attendance. Attendance is tracked on a point system. An individual who has been in the employment more than 90 days is subject to discharge when he reaches ten attendance points during a rolling 12-month period.

All of Mr. Russell's absences of a full day were due to illness and were properly reported. He received points for being late on January 23, February 13, March 24, March 27, April 9, June 4, June 9, October 23, and November 28, 2010. His tardiness ranged from four minutes to over two hours. The final incident was on November 28 when he was approximately one hour late due to oversleeping.

Mr. Russell was notified in his performance review of August 23, 2009 that he needed to improve his attendance. He received a written warning regarding attendance on December 8, 2009. Attendance was again addressed with him during the performance review of July, 2010. He was told at that time that his attendance was unacceptable. He received a written warning on October 12, 2010 when he reached seven points and on November 15, 2010 when he

reached nine-and-a-half points. Because the tardiness of November 28 caused him to reach ten points, Mr. Russell was discharged on November 30, 2010. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Russell received points for nine separate occasions of tardiness during calendar year 2010. With the exception of January 23, his tardiness was not by mere minutes. He was 53 minutes late on March 24; over two hours late on March 27; over an hour late on April 9; 45 minutes late on June 4; 27 minutes late on June 9; and over an hour late on October 23. In spite of being warned on November 16 that he was at nine-and-an-half points, Mr. Russell was still almost one hour late on November 28. Given the extent to which he was late on the occasions identified herein, it is concluded that he was excessively absent on an unexcused basis. It was his responsibility, as a supervisor, to set the standard for those working under him. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 15, 2011, reference 01, is hereby affirmed. Mr. Russell was discharged by Riverside for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css