

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON L SHIELDS
Claimant

APPEAL NO. 10A-UI-09552-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARRIOTT HOTEL SERVICES INC
Employer

**Original Claim: 05/16/10
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Marriott Hotel Services, Inc. filed a timely appeal from an unemployment insurance decision dated June 24, 2010, reference 01, that allowed benefits to Brandon L. Shields. After due notice was issued, a telephone hearing was held August 16, 2010, with Human Resources Manager Jodi Shannon participating for the employer. The claimant did not provide a telephone number at which he could be contacted. Employer Exhibit One was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Brandon L. Shields was employed as a banquet houseman by Marriott Hotel Services, Inc., from October 27, 2009, until he was discharged on or about May 7, 2010. The discharge was effective April 30, 2010, the last day that Mr. Shields actually worked.

Mr. Shields was scheduled to work on May 1, 2, 5, 6, and 7, 2010. He did not work those days because he was incarcerated. He has not received any unemployment insurance benefits since filing a claim effective May 16, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in the record establishes that Mr. Shields was absent for five shifts during the week of May 1, 2010, because of incarceration, a matter of personal responsibility. This evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

The claimant has not received any benefits.

DECISION:

The unemployment insurance decision dated June 24, 2010, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw