

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

KUET NYUOT
7414 GERTRUDE ST
LAVISTA NE 68128

HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO
1 HARVEYS BLVD
COUNCIL BLUFFS IA 51501

Appeal Number: 06A-UI-02619-ET
OC: 02-12-06 R: 12
Claimant: Respondent (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 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 28, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 27, 2006. The claimant participated in the hearing. Carrie Buckley, Employee Relations Manager, 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 facilities attendant from August 31, 2000 to February 10, 2006. He worked from 3:55 a.m. to 12:30 p.m. and was discharged for accumulating 11 attendance points. Employees are discharged when they reach 10 attendance points. On

November 3, 2005, the claimant called in prior to his shift and received 1 point; on January 18, 2006, he called after the start of his shift and received 1½ points; and on February 3, 2006, he was a no-call no show and received 4 points. On February 8, 2006, the claimant's wife called and said there was an emergency involving the couple's 1½-year old daughter and he needed to come home to take them to the hospital. The claimant's supervisor told him to go and the claimant was at the hospital until 9:00 a.m. the following morning. He did not call within the two-hour time allowed and consequently was assessed one-half point for leaving early February 8, 2006, and four more points for calling late February 9, 2006. On February 6, the claimant received a documented coaching for attendance which stated "any further violations of this nature will result in progressive discipline up to and including separation of employment."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's last 4½ points were due to an emergency involving his daughter and it is understandable that under those circumstances he was unable to call on time February 9, 2006. Consequently, the administrative law judge concludes that because the final absence for which he was discharged was related to illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Therefore, benefits are allowed.

DECISION:

The February 28, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/s