

**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**

**DAVID S ZIRON
720 MABEN AVE
GARNER IA 50438**

**OPPORTUNITY VILLAGE
1200 N 9TH ST W
PO BOX 622
CLEAR LAKE IA 50428-0622**

**Appeal Number: 05A-UI-01566-H
OC: 01-09-05 R: 02
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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

David S. Ziron filed an appeal from a decision dated February 4, 2005, reference 01. The decision disqualified him from receiving unemployment insurance benefits. After due notice was issued, a hearing was held in Mason City, Iowa on March 15, 2005. The claimant participated on his own behalf and witness, Lois Ziron. Opportunity Village participated by Administrator Patricia Schlobohm and Team Leader Tammy Rodningen. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David S. Ziron was employed by Opportunity Village from March 12, 2003 until January 10, 2005. He was a full-time personal assistant working from 2:00 p.m. until 10:00 p.m. or 3:00 p.m. until 11:00 p.m. He received a copy of the employee handbook at the time he was hired and signed that he had received it and was responsible for its contents.

Mr. Ziron received warnings regarding his absenteeism on August 19, 2003 and February 10, 2004. He received a final written warning and two-day suspension on September 8, 2004 for absenteeism and tardiness. He was notified his job was in jeopardy. On January 7, 2005, the claimant was absent from work without giving at least four hours' notice of his absence. The four hours is required by the handbook. Exceptions are made if the reason for the absence did not allow four hours' notice but the claimant had no recollection as to why he had been absent or why he failed to give four hours' notice. The employer had determined to discharge him as a result of that final incident and Team Leader Tammy Rodningen, his direct supervisor, had been instructed to bring him to the office of Administrator Patricia Schlobohm when he arrived at work on January 10, 2005. However, the claimant was 50 minutes late for work that day.

The claimant's final tardiness was due to him taking care of personal business regarding bad checks and garnishment of his wages for unpaid medical bills. The claimant attempted to take care of all of these matters before coming to work and did notify the previous shift leader he would be late. He was discharged by Ms. Rodningen and Ms. Schlobohm when he arrived at work on January 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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, (7) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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.

The claimant had been advised his job was in jeopardy as a result of his poor attendance. In spite of the warning, his attendance did not improve. He could offer no explanation for his failure to notify the employer four hours in advance of his shift on January 7, 2005. This was exacerbated by him being 50 minutes late for work on January 10, 2005 for the reason that he was taking care of personal business. The failure to pay his medical bills and writing bad checks is considered personal business and such personal reasons do not constitute an excused absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant was discharged for excessive unexcused absenteeism and he is disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of February 4, 2005, reference 01, is affirmed. David Ziron is disqualified and benefits are withheld until he has requalified by earning ten times his weekly benefit amount, provided he is otherwise eligible.

pjs/kjf