

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MATTHEW BUMP
Claimant

APPEAL NO. 18A-UI-00342-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT
Employer

OC: 12/10/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Matthew Bump (claimant) appealed a representative's December 29, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Riverside Casino and Golf Resort (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 31, 2018. The claimant participated personally. The employer participated by Anna Cavanaugh.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 21, 2016, as a full-time resort club host. The claimant signed for receipt of the employer's handbook on March 21, 2016. The attendance policy in the handbook stated that if an employee accumulated ten attendance points, he would be terminated.

The employer issued the claimant written warnings for absenteeism on August 3, 2016, February 27, April 3, and November 13, 2017. The employer notified the claimant that further infractions could result in termination from employment.

The claimant was tardy for work and accrued one-half attendance point on May 30, 31, July 4, 8, 11, 23, 26, 29, August 9, September 10, October 10, 13, 17, 21, November 4, 6, 7, and 11, 2017. Most of the claimant's tardiness was due to transportation issues. He was absent due to illness on September 26, 2017, and was assessed one attendance point.

The claimant requested and was granted a day off on November 18, 2017, to see a University of Notre Dame game Indiana. He was scheduled to work on November 19, 2017. Seven hours prior to the start of his shift on November 19, 2017, the claimant was unable to rouse the driver and other passengers. The drive back to his home was six hours. The claimant notified his supervisor that he would be late. The employer told the claimant not to appear for work. The claimant appeared for work approximately one hour late. The supervisor terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's December 29, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs